

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BLANCA PIERCE

Claimant

WHIRLPOOL CORPORATION

Employer

APPEAL 21A-UI-20523-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/11/21

Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Blanca Pierce (claimant/appellant), filed an appeal from the September 10, 2021, reference 02, unemployment insurance decision that denied benefits based upon the conclusion she was discharged for leaving work without the employer's permission. The parties were properly notified of the hearing. A telephone hearing was held on November 5, 2021. The claimant participated. The employer did not participate. Exhibits A and B were received into the record. Official notice was taken of the agency records.

ISSUES:

Whether the claimant's separation from employment is disqualifying?

Whether the claimant was able and available for work after separating?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as an inspector from April 1, 2008, until this employment ended on July 1, 2021, when she was discharged. The claimant's immediate supervisor was Third Shift Supervisor Matt (last name unknown).

In November 2020, the claimant's son stopped breathing for 45 minutes while she was giving him cardiopulmonary resuscitation.

The claimant requested and was granted a leave of absence on January 28, 2021. The claimant requested leave from the employer's third party leave servicer, Matrix, because she had a psychological breakdown. She was hospitalized for two weeks shortly after being placed on leave. As a condition of being placed on leave, the claimant was supposed to call in periodically.

The claimant provided copies of the leave paperwork she filled out to initiate her leave with Matrix. (Exhibit A)

In April 2021, the claimant became aware she was no longer receiving paid leave.

On July 12, 2021, the claimant's physician released her to return to work without restriction effective July 9, 2021. The claimant provided a copy of this doctor's release. (Exhibit B). The claimant has not received new restrictions since being released to return to work.

Neither Matrix nor the employer sent the claimant a letter stating that if she did not respond within a particular amount of time, then she would be considered a voluntary quit.

After obtaining this release to return to work, the claimant drove to the employer's premises to drop the document off on July 13, 2021. When the claimant attempted to drop the release off, the receptionist told her that she had been terminated on July 11, 2021. The claimant was told that the employer believed she had abandoned her job.

Although her granddaughter has tragically drowned recently, the claimant started working for four hours per day as a lunch lady on October 9, 2021. The claimant will only work for four hours a day because she is still getting used to working during the day. In particular, the claimant is not used to sleeping through the night yet.

The administrative record KCCO shows the claimant did not make any employer contacts from the week ending July 17, 2021 to the week ending July 31, 2021. It shows the claimant made the requisite two job contacts from August 21, 2021 to October 9, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction*

Treatment Services v. Jackson and Employment Appeal Board, 810 N.W.2d 532 (Iowa Ct. App. 2012).

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to an injury under the advice of her physician. The employer consented to her leaving. The claimant has provided the employer with certification that she has recovered. In addition, the claimant has also offered services to the employer. Finally, the employer did not provide her work after she provided a release. The claimant has met the requirements of the statute.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes claimant is able and available for work.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. *Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1) provides:

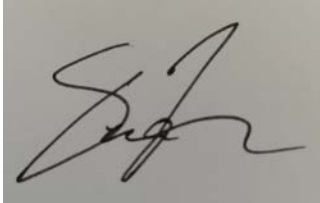
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant obtained a release to return to work without restriction effective July 9, 2021. Although the claimant has been experiencing some traumatic circumstances with her family, her physician has not issued her additional restrictions. The claimant is able and available for work effective July 9, 2021. Benefits are granted.

DECISION:

The September 10, 2021, reference 02, unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

December 9, 2021
Decision Dated and Mailed

smn/scn