

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time production worker from November 18, 1998, until she separated from her employment on May 18, 2005, which was her last day of work. The claimant worked on May 18, 2005, and then failed to return to work thereafter. On May 19, 2005, the claimant learned of a car accident in Mexico injuring her husband and her daughter. The information she initially received was incomplete and she needed to remain at home to take additional phone calls. She called the employer and spoke to Rosario. She explained the situation to Rosario and asked him to tell her manager. The claimant learned later that day that her daughter and husband were seriously injured and that she had to leave immediately to go to Mexico. While in Mexico she had to care for her husband and daughter. While in Mexico she twice attempted to call the employer without success. A doctor did send a fax to Brenda in the employer's office. The claimant was informed at that time to fill out paper work but did not have it to complete. The husband and daughter recovered in mid-July of 2005, and the claimant immediately returned to Iowa and went to the employer and offered to go back to work. However, the employer had no position for the claimant and did not return her to work. The employer had already terminated the claimant because of attendance.

Pursuant to her claim for unemployment insurance benefits filed effective July 17, 2005, the claimant has received unemployment insurance benefits in the amount of \$2,074.00 as follows: \$318.00 per week for six weeks from benefit week ending July 23, 2005, to benefit week ending August 27, 2005, and \$89.00 for benefit week ending September 3, 2005 (earnings \$208.00), and \$77.00 for benefit week ending October 1, 2005 (earnings \$320.00). In other benefit weeks the claimant has reported earnings in a sufficient amount to nullify benefits for those three weeks.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was until mid-July of 2005 or July 15, 2005 when the claimant returned to work and no work was available. Thereafter, the claimant's separation was not disqualifying.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because at relevant times she was not able, available, or earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for that reason.
3. Whether the claimant is overpaid unemployment insurance benefits. She is not.

Iowa Code section 96.5-1-c provides:

An individual shall be disqualified for benefits:

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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

The first issue to be resolved is the character of the separation. The employer's witness, Chris Lamb, Assistant Human Resources Manager, testified that the claimant quit. The claimant testified that she had to leave her employment because of an emergency. The administrative law judge concludes on the evidence here that the claimant, in effect, left her employment voluntarily on May 18, 2005, which was her last day of work. The evidence indicates that the claimant did not return to work on May 19, 2005, and continuing thereafter until mid-July of 2005. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily effective May 18, 2005. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. However, the claimant has demonstrated by a preponderance of the evidence that she is entitled to unemployment insurance benefits beginning July 15, 2005, or benefit week ending July 23, 2005, and continuing thereafter. The claimant left her employment voluntarily on May 18, 2005, to go to Mexico to take care of her husband and daughter who were seriously injured in a car accident. Leaving work voluntarily for compelling personal reasons when the period of absence exceeds ten working days or due to family responsibilities or serious family needs is not good cause attributable to the employer. See 87I IAC 24.25 (20 and 23). Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer. However, the claimant shall not be disqualified if she left her employment for the necessary and sole purpose of taking care of a member of her immediate family who was injured and after the family member sufficiently recovered the claimant immediately returned to the employer and offered her services to the employer provided she did not accept any other employment.

The administrative law judge concludes that the claimant has demonstrated by a preponderance of the evidence that she left her employment for the necessary and sole purpose of taking care of her husband and daughter who are immediate family members who were injured as a result of a car accident in Mexico. The administrative law judge further concludes that the claimant demonstrated by a preponderance of the evidence that when the family members had recovered she immediately returned to the employer and offered to go back to work for the employer but was not hired. The claimant credibly testified that her daughter and husband were injured in a car accident in Mexico and that she had to leave immediately to go to Mexico to take care of them. She further credibly testified that they recovered in mid-July of 2005 and that she immediately returned to the employer and offered to go back to work and no work was available. Ms. Lamb conceded that the claimant had returned to the employer and offered to go back to work in July of 2005. The claimant also credibly testified that on May 19, 2005, her first day of absence, she called the employer and informed Rosario of the situation. The employer confirmed that the claimant did report to human resources that a family member had an accident. It is true that the claimant did not thereafter contact human resources. The administrative law judge concludes that she had

done all that was necessary of her under the appropriate code sections. The claimant had to immediately go to Mexico on May 19, 2005, and did so. The claimant twice tried to call the employer from Mexico unsuccessfully. The claimant did have a physician send a fax to the employer, which the employer apparently received. The claimant was told to fill out paper work but she did not have any paper work. Accordingly, the administrative law judge concludes that although the claimant did leave her employment voluntarily effective May 18, 2005, she is not disqualified to receive unemployment insurance benefits because she left to take care of family members and immediately returned to the employer when her family members had recovered but there was no employment. The claimant returned to the employer mid-July of 2005. The administrative law judge concludes that the claimant is entitled to unemployment insurance benefits beginning July 15, 2005 or benefit week ending July 23, 2005, and continuing thereafter. Unemployment insurance benefits are allowed to the claimant beginning with benefit week ending July 23, 2005, and continuing thereafter provided she is otherwise eligible.

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".

The administrative law judge concludes that the claimant has the burden to prove that she is able, available, earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that, at relevant times, she is and was able, available, and earnestly and actively seeking work. The claimant credibly testified that she returned to the employer in mid-July of 2004 ready, willing, and able to go back to work but no work was available. There is no evidence of any physical restrictions or training restrictions on the part of the claimant affecting her ability to work nor is there any evidence of any time or day restrictions placed on her availability for work. The claimant was apparently seeking work because the administrative law judge notes that beginning in September 2005 the claimant has reported earnings sufficient to reduce or cancel unemployment insurance benefits. Accordingly, the administrative law judge concludes that the claimant is and was, at relevant times, able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits for that reason. Unemployment insurance benefits are allowed to the claimant provided she is otherwise entitled.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal

to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,074.00 since separating from the employer herein on or about May 18, 2005 and then returning to the employer and offering to go back to work in mid-July of 2005 and filing for such benefits effective July 17, 2005. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision of August 29, 2005, reference 01, is affirmed. The claimant, Maria H. Rodriguez is entitled to receive unemployment insurance benefits beginning with benefit week ending July 23, 2005, and continuing thereafter, provided she is otherwise eligible, because although she left her employment voluntarily without good cause attributable to the employer she did so to take care of an injured immediate family member and upon recovery of the family member returned to the employer and offered to go back to work and no work was available. The claimant is and was at relevant times able, available, and earnestly and actively seeking work. As a result of this decision the claimant is not overpaid any unemployment insurance benefits arising out of her separation from the employer herein.

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