

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**JONICA L RIES  
PO BOX 581  
CASCADE IA 52033**

**MEDICAL ASSOCIATES CLINIC  
ATTN HUMAN RESOURCES  
1500 ASSOCIATES DR  
DUBUQUE IA 52002-2260**

**Appeal Number: 04A-UI-12247-S2T  
OC: 10/10/04 R: 03  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1(d) – Separation Due to Illness/Injury/Pregnancy  
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Jonica Ries (claimant) appealed a representative's November 3, 2004 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was not able to work for Medical Associates Clinic (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 8, 2004. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 8, 2004, as a full-time certified medical coder. On August 6, 2004, the claimant had a doctor's appointment regarding her pregnancy. She was advised that she could not return to work. The employer agreed to the claimant's short-term leave. On October 6, 2004, the claimant was released to return to work with restrictions. She could only work 20 hours per week. The employer told the claimant it would seek to fill the claimant's position. If the position was not filled when the claimant was released to return to work without restrictions, the claimant could have her job back. The claimant's baby was born on October 28, 2004. She has been released to return to work without restrictions on December 13, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did.

Iowa Code Section 96.5-1-d 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:

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.

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).

The claimant left work due to an injury under the advice of her physician. The employer consented to her leaving. The claimant has failed to provide the employer with certification that she has recovered because she will not be released until December 13, 2004. In addition, the claimant has failed to offer her services to the employer after having been released. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

The second issue is whether the claimant is able to work. For the following reasons the administrative law judge concludes she is.

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".

871 IAC 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.

The claimant is restricted to working 20 hours per week. Other than this restriction, the claimant can perform work in a number of positions which do not require working over 20 hours per week. The claimant has met her burden of proof to show that she has the ability to work.

DECISION:

The representative's November 3, 2004 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is able for work.

bas/b