BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

MICHELE M PASUT	:	
Claimant	:	**HEARING NUMBER:** 18BUI-07692
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
MONROE CARE CENTER INC	:	
Employer	:	

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Administrative Law Judge's findings of fact are adopted by the Board as its own.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits: Voluntary Quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The law states that one who quits "because of illness, injury or pregnancy upon the advice of a licensed and practicing physician" 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" then the person can receive benefits if "the individual's regular work or comparable suitable work was not available…" Iowa Code §96.5(1)(d).

Expounding on this 871 IAC 24.26 provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> 24.26(6) Separation because of illness, injury, or pregnancy.
>
> a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

Here the Claimant left work based on the advice of a physician but for a non-work related health condition. This condition rendered the Claimant incapable of doing work in general. The Claimant has not shown the requirement of quitting was caused by conditions particular to this employer, or to the type of work at the employer. She has not shown a work-related condition caused the separation. Even if she had, she has not shown compliance with the various notice provisions governing quits over work-related health conditions. 871 IAC 24.26(6)(b)(second para.). She is thus disqualified **but** she will requalify for benefits as soon as she returns and offers her services to the Employer, or until she earns ten times her weekly benefit amount, whichever is sooner. We caution that to be recovered enough to requalify by returning to the Employer the claimant must be able "to perform all of the duties of the previous employment." 871 IAC 24.26(6)(a); *See Hedges v. Iowa Dept. of Job Service,* 368 N.W. 862 (Iowa 1985).

Finally we point out that the Claimant was found not able and available to work in case 07693 which the Claimant lost and still did not appeal to us. Under the ruling in that case she must recover enough to perform gainful activity before she could once again be available to work. This means the only effect of today's decision is to impose the requirement that the Claimant be able to do her old job (not just be attached to the job market in general) and that she return to the Employer and offer her services. Basically what this means is that so long as the Claimant is unable to work, she wasn't getting benefits regardless of the outcome of this case.

DECISION:

The administrative law judge's decision dated August 8, 2018 is **REVERSED**. The Employment Appeal Board concludes that the claimant quit but not for good cause attributable to the employer. Accordingly, she is denied benefits until the earlier of (1) such time as the Claimant has worked in and is paid wages for insured work equal to ten times the Claimant's weekly benefit amount, and (2) the Claimant fully recovers and then returns and offers her services to the Employer. Of course the Claimant may not collect benefits even after requalifying unless she is otherwise eligible, that is, she must also be genuinely attached to the labor market.

No remand for determination of overpayment need be made since the Claimant's claim was locked as a result of the ruling case 07693 and thus even though the Administrative Law Judge in case 07692 (this one) ruled in her favor this did not result in payment of benefits. Further, the Claimant at no time filed a weekly claim requesting payment of benefits. There is no overpayment.

The Employer submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information submitted by the Employer was not presented at hearing. Accordingly none of the new and additional information submitted has been relied upon in making our decision, and none of it has received any weight whatsoever, but rather all of it has been wholly disregarded.

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Kim D. Schmett

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James M. Strohman

RRA/fnv