

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

SHERYL L YAGGY
2216 LINCOLN LOT 16
CEDAR FALLS IA 50613

MIDWEST JANITORIAL SERVICE INC
1395 N CENTER POINT RD
HIAWATHA IA 52233-2101

Appeal Number: 04A-UI-06201-HT
OC: 05/02/04 R: 03
Claimant: Appellant (1)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-d – Quit/Medical

STATEMENT OF THE CASE:

The claimant, Sheryl Yaggy, filed an appeal from a decision dated May 26, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 30, 2004. The claimant participated on her own behalf. The employer, Midwest Janitorial Service, Inc. (Midwest), did not provide a telephone number where a representative could be contacted and did not participate.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Sheryl Yaggy was employed by Midwest from December 2, 2002 until December 1, 2003. She was a part-time janitor.

Her last day of work was December 1, 2003, and she did not come in to work after that, nor did she call in for two weeks. She was hospitalized for mental illness and contacted her supervisor, Doreen, around December 15, 2003, stating she was ready to come back to work. The employer told her she would have to have a doctor's release before she could be put back on the schedule.

Ms. Yaggy was scheduled to work the week between Christmas and New Years, but was hospitalized again from December 31, 2003, until January 12, 2004. There is no certification she has been released to return to work by her doctor without restrictions, nor did she contact the employer after she was released from the hospital.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

The administrative law judge assumes the employer agreed to the claimant's quit after her failure to return to work after December 1, 2003, because it was willing to put her back on the schedule in late December. However, when she did not return to work as scheduled, and again failed to notify Midwest of her absences, this is a voluntary quit without good cause attributable to the employer. In order to be qualified under the provisions of the above Code section, she must first be released to return to work by her doctor without restrictions, then notify the employer and request her job back. The record does not provide any evidence of a full release from her doctor, nor any date on which she requested to return to work at Midwest. She is therefore disqualified.

DECISION:

The representative's decision of May 26, 2004, reference 01, is affirmed. Sheryl Yaggy is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/kjf