

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SHILAH A CASH**  
Claimant

**MERCY CLINICS INC**  
Employer

**APPEAL 21A-UI-01887-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Appellant (4)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

On December 18, 2020, Shilah A. Cash (claimant) filed an appeal from the December 9, 2020, reference 03, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with Mercy Clinics, Inc. (employer) for personal reasons. The parties were properly notified about the hearing held by telephone on February 24, 2021. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. The claimant presented two doctor's notes with her appeal; however, they were not legible and were not admitted into the record.

**ISSUES:**

Was the claimant able to and available for work effective April 12, 2020?  
Did the claimant voluntarily quit employment with good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Receptionist at one of the employer's medical clinics beginning on January 21, 2020, and her last day worked was April 7. As a result of the pandemic, the claimant was required to work at the front door taking the temperature of patients arriving for office visits. On or about April 7, she was exposed to COVID-19 and required to leave work to take a test.

On April 10, the claimant's results came back negative. However, her doctor advised her not to work in that environment due to underlying health issues, and the employer granted the claimant's request for leave. Approximately two weeks later, the claimant was speaking with a co-worker who mentioned the claimant's underlying health issue. The claimant had not shared that information with the co-worker and contacted Human Resources (HR). The HR representative determined that someone from the office had accessed the claimant's medical records the week of April 10, while the claimant was not working. The employer began an investigation.

The claimant was released to return to work June 1; however, she did not return to work. On June 5, the claimant submitted her resignation because she did not want to work in a position where she had to come in close contact with people who may have COVID-19 and she did not feel comfortable working in the office, as her medical records had been accessed by someone without authorization.

In July, the employer determined it was the Director of Nursing (DON) who accessed the claimant's records. The DON's explanation was that she was checking the results of the claimant's COVID-19 test. However, the claimant had notified her supervisor of the results and the DON was not in the claimant's chain of command. The DON continued working for the employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not able to and available for work from April 12 through June 6 because she was on an approved leave of absence and regular unemployment insurance benefits are denied. However, the claimant's separation from employment on June 5 was for good cause attributable to the employer. Benefits are allowed effective June 7, provided she is otherwise eligible.

#### *I. Was the claimant able to and available for work effective April 12, 2020?*

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 provides, in relevant part:

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.

...

(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.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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.

...

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden to prove that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant was on an approved leave of absence effective April 12 and was not released to return to work by her doctor until June 1. The claimant did not return to work after being released and continued the leave of absence until June 5, when she voluntarily quit. Accordingly, she is not eligible for unemployment insurance benefits from April 12 through June 6, 2020.

*II. Did the claimant voluntarily quit employment 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.

Iowa Admin. Code r. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). Where a claim gives numerous reasons for leaving employment Iowa Workforce is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

The claimant has met the burden of proof to establish that she left with good cause attributable to the employer. The claimant's decision not to return to work after an approved leave of absence does not usually constitute good cause attributable to the employer. However, someone in the office accessing the claimant's confidential medical records does constitute good cause attributable to the employer. The claimant and all other medical professionals are regularly directed not to access medical records unless they have a legitimate, job-related reason. The DON was not in the claimant's chain of command and could have obtained the

results of the test from the claimant's supervisor. The fact that information from the medical records appears to have been shared with other employees makes the infraction even more egregious. The conduct of the DON created an intolerable working environment. Accordingly, benefits are allowed effective June 7, provided the claimant is otherwise eligible.

**DECISION:**

The December 9, 2020, reference 03, unemployment insurance decision is modified in favor of the appellant. The claimant was not able to and available for work from April 12 through June 6 and benefits are denied. However, she voluntarily left the employment on June 5 with good cause attributable to the employer. Benefits are allowed effective June 7, 2020, provided she is otherwise eligible.



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Stephanie R. Callahan  
Administrative Law Judge

March 8, 2021  
Decision Dated and Mailed

src/mh

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed or have been unemployed, for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to self-certify for PUA to determine your eligibility under the program.** Additional information on how to self-certify for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.