

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MALINDA M REDMOND
Claimant

APPEAL NO. 10A-UI-14661-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMEGA CABINETS
Employer

OC: 12/20/09
Claimant: Appellant (1)

Section 96.5-1-d – Voluntary Quit for Medical Reasons
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Malinda Redmond (claimant) appealed a representative's October 13, 2010 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Omega Cabinets (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 15, 2010. The claimant participated personally. The employer participated by Angie Boreman, Human Resource Representative.

ISSUES:

Whether the claimant is denied unemployment insurance benefits because she voluntarily quit work without good cause attributable to the employer.

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on October 20, 2008, as a full-time woodworker. In June 2010, the claimant was diagnosed with COPD and arthritis in her back and hips. Her physician told her to find other work. The claimant continued to work for the employer and did not provide the employer with a note from her physician.

The claimant suffered a non-work-related injury to her tailbone and could not work from July 16 through August 23, 2010. She was released to return to work without restrictions on August 24, 2010. The claimant worked 5.5 hours on August 24, 2010 and left work. On August 25 and 29, 2010, the claimant's son called the employer to say the claimant would not be in. The employer did not hear from the claimant after that. On September 2, 2010, the employer sent the claimant a certified letter that Raymond Redmond signed for on September 3, 2010. In the letter, the employer informed the claimant that she had to contact the employer by September 7, 2010, or she would be considered to have separated from employment. The employer never heard from the claimant. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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 was not informed of her leaving and, therefore, did not consent to her leaving. The claimant has failed to provide the employer with certification that she has recovered. In addition, the claimant has failed to offer her services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she is as of August 24, 2010.

871 IAC 24.23(1) provides:

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.

When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant was released to return to work without restrictions by her physician. She is considered to be available for work because her physician stated she was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits for this reason.

DECISION:

The representative's October 13, 2010 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is able and available for work and is not disqualified from receiving unemployment insurance for this reason.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw