

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MADONNA REED

Claimant

APPEAL NO: 06A-UI-10979-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

SSW ENTERPRISES INC

Employer

**OC: 10-22-06 R: 04
Claimant: Appellant (4)**

Section 96.5-1 – Voluntary Leaving
Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 14, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 30, 2006. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant voluntarily left her employment and whether she is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time machine welder for SSW Enterprises from October 23, 2005 to September 24, 2006. The claimant was experiencing relationship problems and suffered a nervous breakdown. She spent five days in the hospital in June 2006 because of a nervous breakdown and was trying to avoid having to return to the hospital. She was unable to return to work or call the employer after September 24, 2006, because she "couldn't do anything, couldn't function and stayed in bed for two weeks" following her separation from employment. The claimant began treatment approximately the first week of November 2006 and began taking medication for her condition the last week of November 2006. Her therapist told her she could try part-time employment but her group leader does not feel she is ready and the claimant does not believe she can work at the present time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment with good cause but is not able and available for work at this time.

Iowa Code section 96.5-1 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.

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".

While the claimant failed to report for work or notify the employer for three consecutive work days in violation of the employer's policy, she was unable to report her absences due to the nature of her illness. Unreported absences do not constitute job misconduct if the failure to report is caused by mental incapacity. Roberts v. IDJS, 356 N.W.2d 218 (Iowa 1984). Under these circumstances the administrative law judge finds the claimant's absence was unavoidable and she was unable to report her absences due to her mental condition at the time.

The next issue is whether the claimant is able and available for work. The administrative law judge concludes she is not at this time because her group therapist and the claimant herself do not believe she is ready to work at this time. Consequently, she is not able and available for work until her group therapist or her regular therapist provide documentation stating the claimant is able to work.

DECISION:

The November 14, 2006, reference 01, decision is modified in favor of the appellant. The claimant voluntarily left employment with good cause but is not able and available for work at this time. Benefits are allowed with regard to the separation but withheld until such time as the claimant is able and available for work.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css