

**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**

**KAREN D GRAHAM
1500 OAKLAND RD NE APT 703
CEDAR RAPIDS IA 52402**

**COMPASS ONE LLC
TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-12839-H2T
OC: 10-17-04 R: 03
Claimant: Appellant (2)**

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-a – Voluntary Leaving – Illness or Injury
871 IAC 24.26(6) – Separation due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 22, 2004, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on December 22, 2004. The claimant did participate. The employer did not participate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a cook full time beginning June, 2004 through August 21, 2004 when she broke her ankle in a non-work related injury. The claimant was off work with doctor's restrictions until October 28, 2004 when she was released to return to work without restrictions.

The claimant went to the employer, Nancy, on October 28 and offered her services and was told that no work was available for her.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no work was available to the claimant upon her release to return to work from a non-work related injury.

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.

871 IAC 24.26(6)a provides:

(6) Separation because of illness, injury, or pregnancy.

b. 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.

The claimant's return to the employer to offer services after the medical recovery evinces an intention to continue working. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed.

DECISION:

The November 22, 2004, reference 04, decision is reversed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/pjs