

**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**

**TONI J MURRAY  
2695 SAMSON AVE  
LEHIGH IA 50557**

**VAN DIEST SUPPLY CO  
PO BOX 610  
WEBSTER CITY IA 50595**

**Appeal Number: 06A-UI-07135-JTT  
OC: 07/10/05 R: 01  
Claimant: Respondent (4)**

**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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit  
Section 96.5(1)(g) – Requalification for Benefits  
Section 96.4(3) – Able and Available  
Section 96.19(38)(c) – Temporarily Unemployed

STATEMENT OF THE CASE:

Van Diest Supply filed a timely appeal from the July 5, 2006, reference 02, decision that allowed benefits and deemed claimant Toni Murray able and available for work. After due notice was issued, a hearing was held on August 2, 2006. Personnel Manager Carolyn Cross represented the employer and presented additional testimony through Production Manager Clark Vold. Claimant Toni Murray participated. The administrative law judge took official notice of the Agency's administrative file. Employer's Exhibit One was received into evidence.

#### FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On September 15, 2003, Toni Murray commenced her full-time employment at Van Diest Supply as a production and shipping operator. In April 2005, Ms. Murray underwent surgery on her lower back for a non-work related condition and was on a medical leave of absence for the next six weeks while she recovered. Ms. Murray returned to work for a few days, but found that her health prevented her from working an eight-hour shift. Production Manager Clark Vold then allowed Ms. Murray to go to four-hour shifts, but Ms. Murray also found this difficult. Ms. Murray's primary responsibilities entailed placing empty jugs on a production belt. Ms. Murray last appeared and performed work for the employer at the beginning of July. On or about July 19, Ms. Murray's doctor provided the employer with a medical release to excuse Ms. Murray's absences for the period of July 5-20, 2005. In addition, the medical release restricting Ms. Murray to "limited bending and twisting" and imposed a 15-pound lifting restriction. The employer would not allow Ms. Murray to return to the employment without a full release. Ms. Murray continued to call in daily to report the need to be absent from work and the employer continued to hold her position open for her. On August 15, Ms. Murray contacted Mr. Vold to advise she was quitting the employment due to her health and the need to find less physically taxing work.

Ms. Murray then established an original claim for benefits that was effective July 10, 2005. Iowa Workforce Development calculated Ms. Murray's weekly benefit amount to be \$283.00. On August 15, 2005, an Agency claims representative entered the reference 01 decision that denied benefits effective July 10, 2005, based on a finding that Ms. Murray was not able to perform work due to illness. The reference 01 decision became a final Agency decision on August 25, 2005.

On September 15, 2005, Ms. Murray commenced full-time employment with Hawkeye Glove Manufacturing. During the fourth quarter of 2005, Ms. Murray earned more than 10 times her weekly benefit amount by means of her employment with Hawkeye Glove Manufacturing.

On June 29, 2006, Ms. Murray was temporarily laid off from her full-time employment at Hawkeye Glove Manufacturing. On July 2, 2006, Ms. Murray established an additional claim for benefits in connection with a temporary layoff from her full-time employment at Hawkeye Glove Manufacturing. Ms. Murray received benefits for one week and then returned to work at Hawkeye Glove Manufacturing.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue the administrative law judge must address is whether Ms. Murray's voluntary quit was for 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.

871 IAC 24.25(35) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The evidence in the record indicates that Ms. Murray did not obtain a full release that would allow her to return to the employment at Van Diest Supply and decided not to return to the employment. Accordingly, the administrative law judge concludes that Ms. Murray's voluntary quit was not for good cause attributable to the employer. The employer's account will not be charged for benefits paid to Ms. Murray. Because the quit was without good cause attributable to the employer, Ms. Murray was disqualified for benefits until she had worked in and been paid wages for insured work equal to ten times her weekly benefit amount since separating from the employment with Van Diest Supply.

The next issue is whether Ms. Murray has requalified for benefits. She has.

Iowa Code section 96.5-1-g 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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Workforce Development records indicate that Ms. Murray requalified for benefits during the fourth quarter of 2005 through her employment at Hawkeye Glove Manufacturing.

The third issue is whether Ms. Murray is able and available for work and/or whether she was temporarily unemployed from her full-time employment with Hawkeye Glove Manufacturing and, therefore, not subject to the able and available provisions set forth at Iowa Code section 96.4(3).

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".

An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

The evidence in the record indicates that Ms. Murray has been able to work since September 15, 2005, when she commenced her employment at Hawkeye Glove Manufacturing. The evidence further indicates that Ms. Murray was temporarily employed pursuant to a plant shutdown during the benefit week that ended July 8 and was, therefore, not subject to the able and available provisions set forth at Iowa Code section 96.4(3).

#### DECISION:

The Agency representative's July 5, 2006, reference 02, decision is affirmed, but modified as follows. The claimant's separation from the employment on August 15, 2005 was a voluntary quit without good cause attributable to the employer. The employer's account will not be charged for benefits paid to the claimant. The claimant requalified for benefits during the fourth

quarter of 2005. The claimant has been able to work since commencing her new employment on September 15, 2005. The claimant was temporarily unemployed from her full-time employment during the week that ended July 8, 2006 and, therefore, was not subject to the able and available requirements of Iowa Code section 96.4(3). The claimant is eligible for benefits, provided she is otherwise eligible.

jt/pjs