

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRI A FITZPATRICK
Claimant

APPEAL NO. 12A-UI-03675-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA DEPARTMENT OF INSPECTIONS
AND APPEALS**
Employer

OC: 03/11/12
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.5-1-c – Voluntary Quit for Care of Family Member
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Sherri Fitzpatrick (claimant) appealed a representative's April 5, 2012 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Iowa Department of Inspections and Appeals (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 17, 2012. The claimant participated personally. The employer was represented by David Williams, Assistant Manager Appellate Services, and participated by Betty Tschetter, Human Resources Manager, and Dawn Fisk, Division Administrator.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 22, 2007, as a full-time health facilities surveyor. The claimant's husband suffered a head injury in April 2007. His condition deteriorated in the summer of 2011. In addition the claimant's daughter moved home so the claimant could care for her. The daughter has muscular dystrophy. The claimant asked the employer to change her job description so she did not have to travel but did not notify the employer of her home conditions and the family members for whom she had to care. She did not request family medical leave (FMLA). The employer could not agree to change the claimant's job description. The claimant resigned effective January 3, 2012. The employer understood the claimant was resigning because the employer would not change her job description. Continued work was available had the claimant not resigned. The claimant's family members have not recovered to the point that they do not need the claimant's care.

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-c 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

The claimant left work to take care of her husband and daughter who were ill. She did not notify the employer of the reason for her resignation. The claimant's husband and daughter have not sufficiently recovered and the claimant has not returned to and offered 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 was not.

871 IAC 24.23(10) provides:

(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.

When an employee requests and is granted a leave of absence she is considered to be unavailable for work. In this case the claimant did not request a leave of absence. She has taken time away from working to care for her husband and daughter. She is considered to be unavailable for work after January 3, 2012. The claimant is disqualified from receiving unemployment insurance benefits for that period due to her unavailability for work.

DECISION:

The representative's April 5, 2012 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 also disqualified from receiving unemployment insurance benefits for that period due to her unavailability for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs