

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE M BERGE
Claimant

APPEAL NO. 08A-UI-00177-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPREHENSIVE SYSTEMS INC
Employer

**OC: 12/02/07 R: 03
Claimant: Appellant (1)**

Section 96.4-3 – Requesting Leave of Absence
871 IAC 24.23(10) – Able and Available for Work

STATEMENT OF THE CASE:

Nicole Benge filed an appeal from a representative's decision dated December 28, 2007, reference 01, which denied benefits because the claimant was on a leave of absence and, therefore, not available for work and denied benefits effective December 2, 2007. After due notice a telephone conference hearing was scheduled for and held on January 22, 2008. Ms. Benge participated personally. Participating on her behalf was Mr. Tom Moritz, Union Representative, United Food & Commercial Workers' Union Local #431. The employer participated by Ms. Heyenga, Production Director, and Ms. Jamie Ozello, Unit Manager.

ISSUE:

The issue in this matter is whether the claimant agreed to a leave of absence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered the evidence in the record finds the claimant worked for this employer from June 26, 2006 until November 30, 2007 when she began an approved leave of absence offered by the employer. Ms. Benge held the position of direct support staff caring for disabled individuals in a group home setting. The claimant was employed part-time working 20 hours per week and was paid by the hour. Her immediate supervisor was Ms. Jamie Ozello.

Ms. Benge presented a doctor's limitation to Comprehensive Systems, Inc. Because of the doctor's limitation Ms. Benge she could no longer perform the duties incident to her position of direct support staff. As a direct support staff member employees are required to lift 60 or more pounds from the floor to the waist. This job requirement is covered in the job description as well as the company handbook. The claimant agreed to the lifting requirement at the time of hire. Ms. Benge provided her employer a doctor's limitation indicating that she could perform no more than 25 pounds of lifting due to pregnancy. Because the claimant was unable to perform the lifting requirements that were required in her position at the group home or assigned as well as other group home positions, the claimant had the option of quitting work or accepting a leave of

absence that was offered by the employer. Although not anxious to do so, Ms. Bengé accepted the leave of absence in the hopes of being re-employed with the company in the future.

It is the claimant's position that although her medical condition was not work-related, she believes that the employer should have accommodated her by allowing her to perform work as a support staff worker in a different less aggressive setting where lifting was not often necessary.

Since leaving her employment the claimant has actively sought re-employment and at the time of hearing has become re-employed.

REASONING AND CONCLUSIONS OF LAW:

The evidence in the record establishes that at the time that her employment ended with Comprehensive Systems, Inc., the claimant had accepted being placed on maternal leave of absence. Ms. Bengé accepted the leave of absence in the hopes that she could return to this employment in the future when her medical limitations had been lifted by her physician.

871 IAC 24.22(2)j(1)(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

871 IAC 24.26(6)a provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

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

a. 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.

Because the claimant entered into a leave of absence, she is considered to have become voluntarily unemployed under the provisions of the Iowa Employment Security Law.

DECISION:

The representative's decision dated December 28, 2007, reference 01, is hereby affirmed. The claimant is not eligible to receive unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/css