

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA J TITUS
Claimant

APPEAL NO. 09A-UI-00066-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

A'VIANDS
Employer

**OC: 11/16/08 R: 03
Claimant: Appellant (1)**

Section 96.5-1-d - Voluntary Quit for Medical Reasons
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Sandra Titus (claimant) appealed a representative's December 23, 2008 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with A'Viands (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 15, 2009. The claimant participated personally. The employer participated by Len Stoskopf, Safety Manager.

ISSUE:

The issue is whether the claimant is denied unemployment insurance benefits because she voluntarily quit work without good cause attributable to the employer. In addition the issue is whether the claimant is able and available for work.

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 January 3, 1997, as a part-time cook's assistant. The claimant took Family Medical Leave (FMLA) from December 21, 2007, through January 15, 2008, and then again from July 18 through September 19, 2008. She supplied a doctor's note indicating she was not able to work. The claimant was to return to work on September 23, 2008. The claimant did not return to work or notify the employer of her absence. The employer sent her a note asking her to update the employer and provide a doctor's note for her failure to return to work. The claimant did not respond. On October 16, 2008, the employer sent the claimant a letter reiterating that it had requested certification from the claimant's physician but the claimant did not respond. The employer assumed the claimant was not returning to work and terminated the claimant's employment at the end of her FMLA, September 19, 2008. The claimant did not respond to the employer's letter. Continued work was available had the claimant not resigned. The claimant's physician released her to work with restrictions on November 12, 2008.

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 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 24.23(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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her actions. She told the employer that she could not work. When an employee stops work after a leave of absence, her leaving is without good cause attributable to the employer. The claimant left work to take a medical leave of absence and then did not return when the leave had terminated. The claimant's refusal to return to work after the expiration of her leave constitutes a voluntary quit. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

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(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness she is considered to be unavailable for work. The claimant was restricted from all work through November 11, 2008. She is considered to be unavailable for work through November 11, 2008. The claimant is disqualified from receiving unemployment insurance benefits from July 18 through November 11, 2008, due to her unavailability for work.

DECISION:

The representative's December 23, 2008 decision (reference 02) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are denied. In addition, the claimant is disqualified from receiving unemployment insurance benefits from July 18 through November 11, 2008, due to her unavailability for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs