

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA S THOMAS

Claimant

APPEAL NO. 11A-UI-11586-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC BLACK HAWK COUNTY INC

Employer

OC:08/07/11

Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated August 31, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 26, 2011. Claimant participated. The employer failed to respond to the hearing notice and did not participate in the hearing. The record consists of the testimony of Melissa Thomas

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a full-time valet driver for the employer. The employer is a casino located in Waterloo, Iowa. The claimant's last day of work was July 20, 2011. On July 21, 2011, the claimant was involved in a non-work-related automobile injury. Her injuries required her to be off work. The claimant made regular reports to her employer about her condition. She did not qualify for Family Medical Leave Act (FMLA) leave because her employment had begun on October 4, 2010.

On August 4, 2011, the employer informed the claimant that her position could no longer be held open for her and that she was terminated. The claimant was fully released to return to work by her physician on August 8, 2011.

REASONING AND CONCLUSIONS OF LAW:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Separations of employment for health related reasons are among the most challenging cases to decide in unemployment insurance law. The starting point for analysis of these cases is determining which party initiated the separation of employment. In this case, the evidence is uncontested that it was the employer who initiated the separation of employment. The claimant was terminated by the employer on August 4, 2011. The claimant was informed that the employer could no longer hold open her position. The claimant had been off work due to a non-work-related injury. The claimant clearly did not quit and wanted to return to work. There is no evidence that there was a negotiated leave of absence. FMLA leave is not applicable since the claimant did not work for the employer for the requisite time to qualify for FMLA leave. The employer made a unilateral decision to terminate the claimant because she could not return to work when the employer wanted her to return to work.

The administrative law judge concludes that the claimant did not voluntarily quit her job but rather was terminated by the employer. There is no evidence of misconduct. The claimant is not disqualified from receiving benefits because of the separation of employment.

The next issue is whether the claimant is able and available for work.

871 IAC 24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining baleens as do all other individuals.

The claimant established a claim for benefits with an original claim date of August 7, 2011. At the time she established her claim, she was fully released by her physician to return to work. Claimant was able and available for work effective the week beginning August 7, 2011.

DECISION:

The decision of the representative dated August 31, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible. The claimant was able and available for work effective the week beginning August 7, 2011.

Vicki L. Seck
Administrative Law Judge

Decision Dated and Mailed

vls/css