

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DORA M PIERRE
Claimant

APPEAL NO. 10A-UI-14444-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

**OC: 09/19/10
Claimant: Appellant (1)**

Iowa Code Section 96.5(1)(d) – Voluntary Quit
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 15, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 10, 2010. Claimant participated. Mary Eggenburg represented the employer and presented additional testimony through Mary Sauers. Exhibit B was received into evidence.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by the University of Iowa Hospitals and Clinics as a full-time nursing assistant until July 9, 2010, when she voluntarily quit to relocate to Florida where she intended to live with her sister. The claimant provided notice to the employer in June that she intended to quit to relocate. The employer continued to have work available for the claimant. The claimant had several personal issues that factored into her decision to leave the employment. The claimant's ex-husband was no longer paying child support. The claimant's son was in trouble with the law. The claimant had become homeless and had a minor daughter to provide for. The claimant was suffering from depression and anxiety.

The claimant's personal issues made it difficult for her to meet her obligations to the employer and strained her relationship with the employer. The claimant was approved for intermittent leave under the Family and Medical Leave Act as of the end of March 2010, based on her mental health diagnoses. The employer was willing to provide appropriate leave and was empathetic with regard to the claimant's personal issues. But the claimant exceeded the time off authorized through the leave of absence process. The claimant did not appreciate it when the employer pointed this out. The claimant felt harassed when the employer pointed out her

tardiness. The claimant felt harassed when other staff would interrupt her lunch break to obtain information necessary to care for the patients on the internal medicine floor where the claimant worked, but this was standard operating procedure.

The claimant had apprised her primary care physician of her personal issues and the stress she felt in the employment. Her physician had recommended that she consider less stressful employment, but did not specifically advise her to leave her employment. The claimant had worked in the same work environment for several years and had most recently been on the internal medicine floor for three consecutive years. The claimant did not request from the employer accommodations over and above the intermittent leave, or advise the employer she would quit unless additional accommodations were provided. Since separating from the employment, the claimant has not returned to the employer to offer her services. Instead, the claimant relocated to Florida in August 2010 to accept an offer of assistance from her sister.

Since the claimant established her claim for benefits she has looked for new full-time employment and has made three or more job contacts per week. The claimant's medical circumstances do not prevent her from being gainfully employed.

REASONING AND CONCLUSIONS OF LAW:

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.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

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.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and

constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job. In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

When a worker voluntarily quits to relocate to another locality, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(2). When a worker voluntarily quits due to dissatisfaction with the work environment or due to a personality conflict with the supervisor, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21) and (22).

The weight of the evidence in the record fails to establish a medical condition that made it necessary for the claimant to leave the employment to avoid serious danger to her health. The claimant did not request accommodations from the employer over and above the intermittent leave request, did not notify the employer that she would have to quit unless such additional accommodations were provided, and did not provide the employer with medical documentation supporting the need to quit the employment. Nor has the claimant provided sufficient medical documentation for the appeal hearing to support the idea that it was medically necessary to leave the employment. In addition, the weight of the evidence in the record fails to establish that the claimant's physician specifically advised her to leave the employment. The evidence also indicates the claimant has not returned to offer her services after making a full recovery.

The evidence indicates instead that the claimant voluntarily quit the employment because she had fallen on hard times in her personal life and needed to take advantage of an offer of assistance from a sister who lived in Florida. This is the information the claimant provided to the employer at the time she gave her notice to quit. The weight of the evidence indicates that the claimant did indeed voluntarily quit the employment so that she could relocate to a new locality. The weight of the evidence indicates also that the claimant did indeed have a mild personality conflict with her supervisor and had grown dissatisfied with the work environment. These were relatively minor considerations compared to the need to relocate to secure permanent housing. While the claimant had compelling personal reasons to leave the employment, the evidence fails to establish a quit for good cause attributable to the employer. Accordingly, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant.

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".

871 IAC 24.22(1)a, (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.

(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 ableness as do all other individuals.

(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.

The claimant has presented sufficient evidence to establish that she has been physically and mentally able to work, available for work, and has actively and earnestly sought new employment since she relocated to Florida and established her claim for benefits. Thus, the claimant would be eligible for unemployment insurance benefits if she had not quit the employment for a disqualifying reason and if she met all other eligibility requirements.

DECISION:

The Agency representative's October 15, 2010, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal

to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. The claimant has been able and available for work since she established her claim.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs