

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BROOKE E JONES
Claimant

APPEAL NO. 10A-UI-05382-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

**Original Claim: 02/21/10
Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Leaving
871 IAC 24.22(2)j – Leave of Absence
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Mercy Hospital (employer) appealed a representative's March 30, 2010 decision (reference 01) that concluded Brooke E. Jones (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 27, 2010. The claimant participated in the hearing and presented testimony from one other witness, Adam Jones. Deb Bagnall appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 11, 2008. She worked full-time as medical laboratory technician at the employer's Des Moines, Iowa hospital. Her last day of work was August 11, 2009.

The claimant began a leave of absence on August 14, 2009, partially covered under FMLA (Family Medical Leave). The initial portion of the leave was due to complications from pregnancy; subsequently, the leave was for post-partum depression. After the applicable period of FMLA expired, the claimant's leave was converted to regular medical leave. Several extensions were allowed, with the final period of extension ending as of February 6, 2010. The claimant understood that in order to retain her employment, she needed to be able to and in fact return to some position with the employer by February 6, 2010.

The claimant continued to deal with post-partum depression issues, and was hospitalized from January 22 through February 19, 2010, thus missing her deadline for returning to the employer.

However, even upon her release from the hospital, she did not recontact the employer to seek to return to employment. She scanned job postings with the employer on an online bulletin board, but did not make application, as she did not believe they suited her needs. The employer had positions available at that time which were comparable to the claimant's prior position in regard to duties, schedule, and pay. The claimant indicates that as of her discharge from the hospital on February 19, she was released to return to work, but she did not obtain a work release from her doctor and has not presented one to the employer.

When the claimant made no further attempt to communicate or return to employment with the employer, on February 24, 2010 the employer sent her a letter, received by her on February 26, indicating that her employment was ended.

The claimant established a claim for unemployment insurance benefits effective February 21, 2010. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action that directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action that directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if at the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits; and, conversely, if at the end of the leave of absence the employee fails to return and subsequently becomes unemployed, the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

Here, the claimant failed to return at the end of the leave of absence, and is therefore deemed to have voluntarily quit the employment. The claimant therefore has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2.

Where a claimant has been compelled to leave employment due to a medical or health issue not caused or aggravated by the work environment, the claimant is not eligible to receive unemployment insurance benefits until or unless the claimant then recovers, is released to return to work by her physician, and in fact does attempt to return to work with the employer. § 96.5-1-d; 871 IAC 24.25(35). A “recovery” under Iowa Code § 96.5-1-d means a complete recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985).

The claimant was compelled to quit as of February 6, 2010, because she was unable to return to work at that time due to a health issue not caused or aggravated by the work environment. Subsequent to February 6, 2010, the claimant has not demonstrated she has been released to return to full work duties. Further, she has not attempted to return to work with the employer. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied until or unless she demonstrates she is fully released and does affirmatively contact the employer and attempt to return to work, if then no comparable positions are available to her.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's March 30, 2010 decision (reference 01) is reversed. The claimant voluntarily left her employment effective February 6, 2010 as she was unable to return to work from a leave of absence due to a health condition. She has not yet demonstrated she has been released to return to work, and has not yet affirmatively offered to return to work. As of February 6, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, or until she has demonstrated she has been released for work by her doctor and has affirmatively offered to return to work and no comparable work was available, provided she is then otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw