

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**DOROTHY M ABRAHAMSON  
4955 WHEELERWOOD RD  
NORTHWOOD IA 50459**

**DIAMOND JO WORTH LLC  
DIAMOND JO CASINO  
777 DIAMOND JO LAND  
NORTHWOOD IA 50459-8801**

**Appeal Number: 06A-UI-05920-JTT  
OC: 12/18/05 R: 02  
Claimant: Appellant (5)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.4(3) – Able & Available  
Section 96.5(1)(d) – Voluntary Quit Due to Illness

STATEMENT OF THE CASE:

Dorothy Abrahamson filed a timely appeal from the June 5, 2006, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on June 26, 2006. Ms. Abrahamson participated and presented testimony from her neighbor, Kathy Bailey. Director of Human Resources Nancy Vine represented the employer and presented additional testimony through Casino Cage Manager Cynthia Starkey. The parties waived formal notice on the issues of whether the claimant had been discharged for misconduct or had voluntarily quit for good cause attributable to the employer and this decision addresses those issues.

#### FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On March 27, 2006, Dorothy Abrahamson commenced her employment with Diamond Jo Casino as a full-time cashier. Ms. Abrahamson appeared and worked her last shift on April 7. On April 9, Ms. Abrahamson notified Cage Manager Cynthia Starkey that she did not feel well and would be absent from work. The employer's written policy required Ms. Abrahamson to notify the employer at least two hours before the scheduled start of her shift if she needed to be absent and Ms. Abrahamson's call to Ms. Starkey on April 9 complied with the policy. On April 11, Ms. Abrahamson was hospitalized due to low blood oxygen saturation and associated shortness of breath. On April 12, Ms. Abrahamson's daughter notified the employer that Ms. Abrahamson had been hospitalized, but could not and did not provide the employer with an expected return date. The employer has a written attendance policy. The employer reviewed the policy with Ms. Abrahamson at the time of orientation and provided Ms. Abrahamson with a copy of the policy. The employer's written attendance policy required Ms. Abrahamson to notify the employer each day she was absent. Ms. Abrahamson was discharged from the hospital on April 14. Ms. Abrahamson received oxygen treatment while she was in the hospital. Ms. Abrahamson was physically able to use the telephone, but did not notify the employer of her need to be absent. Ms. Abrahamson continued to be dependent on oxygen treatment after she left the hospital. Ms. Abrahamson made no attempt to personally contact the employer after calling in her absence on April 9 and made no more attempts to have anyone else contact the employer on her behalf after April 12. The employer waited until April 17 to hear from Ms. Abrahamson about whether and when she would return to work, but Ms. Abrahamson did not contact the employer. By April 17, Ms. Abrahamson had missed approximately six scheduled shifts and the employer concluded Ms. Abrahamson had abandoned the employment. The employer did not notify Ms. Abrahamson of the decision to formally terminate her employment. Ms. Abrahamson made no attempts to contact the casino until early May and even at that time did not seek contact with Ms. Starkey to discuss further employment.

Ms. Abrahamson uses oxygen at night when she sleeps. Ms. Abrahamson also uses oxygen during the day and is unable to be without access to an oxygen tank for more than two or three hours. Ms. Abrahamson has not been released to return to work.

Ms. Abrahamson established an additional claim for benefits that was effective May 7, 2006, but has not received benefits.

#### REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that Ms. Abrahamson has been able and available for work since May 7, 2006, the effective date of her additional claim for benefits. It does not.

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 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.

The evidence in the record establishes that Ms. Abrahamson had not been able to work since April 9, 2006. Accordingly, Ms. Abrahamson is disqualified for benefits until she provides proof to Iowa Workforce Development that she has been fully released to return to full-time employment.

The evidence in the record establishes a quit. The issue for the administrative law judge is whether the evidence in the record establishes that the quit was for good cause attributable to the employer. It does not.

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.

871 IAC 24.25(35) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The evidence in the record indicates that Ms. Abrahamson has not fully recovered so that she could perform all of the duties of her job at the casino, that a licensed and practicing physician has not released Ms. Abrahamson to return to work, and that Ms. Abrahamson has not returned to the casino to offer her services subsequent to a full recovery. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Abrahamson's voluntary quit was without good cause attributable to the employer. Ms. Abrahamson is disqualified for benefits until she had worked in and earned ten times her weekly benefit amount from insured work since separating from the employment at Diamond Jo Casino, provided she is otherwise eligible.

DECISION:

The Agency representative's June 5, 2006, reference 04, decision is modified as follows. The claimant voluntarily quit without good cause attributable to the employer on April 9, 2006. 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 claimant has not been able and available for work since establishing her additional claim for benefits on May 7, 2006, and is, therefore, not eligible for benefits until she provides proof to Iowa Workforce Development that she is able and available to work, including that she has been fully released to return to work without restrictions.

jt/kkf