

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE C FUNK

Claimant

APPEAL NO: 10A-UI-05109-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CDS GLOBAL INC

Employer

OC: 04/19/09

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
871 IAC 24.22(2)j – Leave of Absence
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Julie C. Funk (claimant) appealed a representative's March 26, 2010 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from CDS Global, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 19, 2010. The claimant participated in the hearing. Sharon Kroger appeared on the employer's behalf and presented testimony from two other witnesses, Denise Barnes and Dawn Maassen. 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.

ISSUES:

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? Is the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently began working for the employer on September 12, 2005. She worked part time (32 hours per week) as a machine operator at the employer's Harlan, Iowa data management facility. She worked 7:00 a.m. to 3:30 p.m., Monday through Thursday. Her last day of work was December 3, 2009.

The claimant had taken a period of time from September 8 through November 13 as a medical leave of absence, as she had given birth on September 19; her daughter was born about three months premature. The claimant returned to work from November 16 through December 3, then resumed leave of absence status upon the release of her daughter home from the hospital on December 5. The claimant's regular medical leave expired on December 31.

The employer allowed an additional personal leave through January, and then on January 27 allowed an additional extension of the personal leave through February; she was told that on or

by March 1 she would have to make a decision as to whether to return to work or to quit to stay with her daughter.

The daughter's doctor had advised that the child be kept out of group daycare settings to avoid exposure to illness until at least the child's first birthday. The claimant was unable to find anyone she considered suitable to care for her child other than herself. As a result, on March 2 she informed the employer that she had determined she could not return to work.

The claimant established an unemployment insurance benefit year effective April 19, 2009. She reopened the claim by filing an additional claim effective February 21, 2010.

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 which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which 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 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 at the end of the leave of absence 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. While choosing to stay with and provide care for her daughter so as to avoid potential exposure to illness is a compelling personal reason or important family responsibility or need, it is not a reason attributable to the employer. 871 IAC 24.25(20), (23). The doctor did not specify that the only person who could provide the care was the claimant; rather, it was the claimant's determination that no other adequate childcare providers were available. Again, while the claimant may have had good reasons for making that determination, the inability to find suitable childcare is not a reason attributable to the employer. 871 IAC 24.25(17). The claimant has not satisfied her burden. Benefits are denied.

With respect to any week in which unemployment insurance benefits are sought, In order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. Part of this requirement is that the claimant must remain available for work on the same basis as when she was previously working and earning the wage credits on which her unemployment insurance benefits are based. 871 IAC 24.22(2)(a). As of February 21, 2010, the claimant was not available for work on the same basis in which she worked during her base period. Benefits are denied.

DECISION:

The representative's March 26, 2010 decision (reference 02) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 2, 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, provided she is otherwise eligible. Further, the claimant is not able to work and available for work effective February 21, 2010, and not eligible for benefits until such time as her availability status changes, if she is then otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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