

**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**

**MARTHA E HERNANDEZ  
#127  
2128 S RIVERSIDE DR  
IOWA CITY IA 52246**

**UNIVERSITY OF IOWA  
c/o DAVID BERGEON  
121 R UNIVERSITY SERVICES BLDG  
IOWA CITY IA 52242**

**Appeal Number: 05O-UI-05606-A  
OC: 01-16-05 R: 03  
Claimant: Appellant (1)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1(d) – Voluntary Quit for Medical Reasons

STATEMENT OF THE CASE:

Martha E. Hernandez filed a timely appeal from an unemployment insurance decision dated February 16, 2005, reference 01, which disqualified her for benefits. After due notice was issued, a hearing was held in Cedar Rapids, Iowa on April 5, 2005. Following that hearing, administrative law judge Bonny G. Hendricksmeier issued a decision dated April 11, 2005 affirming the disqualification. Ms. Hernandez filed an appeal to the Employment Appeal Board which, in a decision dated May 20, 2005 remanded the case for further proceedings. Once again due notice was issued and a hearing was held on July 21, 2005 in Cedar Rapids. Ms. Hernandez participated on her own behalf with additional testimony from her mother, Martha Frenier, and additional testimony and assistance from her stepfather, Eric Frenier.

Exhibits A and B were admitted into evidence. Human Resources Specialist David Burgeon and Human Resources Generalist Keith Clasen participated for the employer, the University of Iowa.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Martha E. Hernandez was employed by the University of Iowa from September 8, 1997 until she resigned on December 20, 2004. She last worked full time as a custodian. Although she did not realize it at the time, Ms. Hernandez was suffering from schizophrenia in the fall of 2004. She resigned in a telephone message left for her supervisor, Johnny Starckovich. Ms. Hernandez did not specifically mention health as the reason for her resignation. She had not yet been seen by a physician. Soon after the resignation, her mother and stepfather had Ms. Hernandez admitted to a hospital in Iowa City where the diagnosis of schizophrenia was made. She was released from the hospital in early January of 2005. She has spoken to individuals at the University of Iowa about resuming her employment, but as of the time of the hearing she had not provided the University with an unconditional release to return to work from her physician.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether Ms. Hernandez is eligible to receive unemployment insurance benefits at this time. She is not.

Iowa Code section 96.5-1-e 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:

e. The individual left employment upon the advice of a licensed and practicing physician, for the sole purpose of taking a member of the individual's family to a place having a different climate, during which time the individual shall be deemed unavailable for work, and notwithstanding during such absence the individual secures temporary employment, and returned to the individual's regular employer and offered the individual's services and the individual's regular work or comparable work was not available, provided the individual is otherwise eligible.

The evidence in the record persuades the administrative law judge that the underlying cause of the resignation was Ms. Hernandez' health. There is no evidence in the record to establish that the health condition was either caused or aggravated by working conditions at the University of Iowa. Nevertheless, the section of the Iowa Code set forth above allows unemployment insurance benefits to an individual who has resigned for a medical reason. The statute requires that the individual return to the employer with an unrestricted release to return to work. At that point, if the individual's regular work or comparable suitable work is not available, the individual then would qualify for unemployment insurance benefits. If, and only if, Ms. Hernandez follows the requirements of the statute and if, and only if, the university has no work available for Ms. Hernandez at that time would she be eligible for unemployment insurance benefits.

A provision of the Iowa Administrative Code found at 871 IAC 24.25, requires that an individual resign for a medical reason with the advice of his or her physician. The administrative law judge is mindful of this rule but is also mindful of decisions by the Iowa Supreme Court in similar cases involving individuals who because of the nature of their illness could not give proper notice to the employer of the need for absence. In those cases the Supreme Court of Iowa allowed unemployment insurance benefits on a discharge even though the individual did not properly report the absences to the employer. The court noted that the individual could not be expected to properly notify the employer because of the health condition. Here, the claimant resigned without a doctor's advice because she did not realize that she was ill.

Benefits are not allowed at this time because the claimant has not met all of the requirements of Iowa Code section 96.5-1-d. If she returns to the employer providing the proper notification of her release to return to work without restrictions and if the employer has no work available, she should promptly report this circumstance to her local workforce development center.

**DECISION:**

The unemployment insurance decision dated February 16, 2005, reference 01, is affirmed. The claimant is not entitled to receive unemployment insurance benefits at this time. She may requalify for unemployment insurance benefits by following the procedure set forth in Iowa Code section 96.5-1-d or by earning ten times her weekly benefit amount in wages for insured work.

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