

**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**

**IRIS D QUALLS
2130 VALLEY PARK DR
CEDAR FALLS IA 50613**

**BLACK HAWK COUNTY
C/O PERSONNEL DIRECTOR
316 E 5TH ST
WATERLOO IA 50703**

**Appeal Number: 04A-UI-05760-DT
OC: 04/25/04 R: 03
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 and Available
871 IAC 24.22(2)j – Leave of Absence
Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Iris D. Qualls (claimant) appealed a representative's May 13, 2004 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits in connection with Black Hawk County (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 15, 2004. The claimant participated in the hearing. Linda Matlock appeared on the employer's behalf. During the hearing, Claimant's Exhibit A was entered into evidence. 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.

FINDINGS OF FACT:

The claimant started working for the employer on May 6, 2002. She worked full time as a licensed practical nurse (LPN) in the employer's long-term care nursing facility. Her last day of work as of the date of the hearing was October 12, 2003. Her doctor took her off work at that time due to a lower back and nerve problems that resulted in back surgery on November 6, 2003. The cause of the medical condition is unknown, but was not demonstrated to be due to the employment.

The claimant's doctor had her completely off work through April 25, 2004. On April 22, he gave her a release to return to work as of April 25 with restrictions: "10 lb. lifting restriction; restricted from repetitive bending, stooping and lifting." The restrictions were to be in place for six months. The claimant presented this partial release to the employer on April 23, but was informed that since the cause of the medical condition was not shown to be work-related, the employer would not accept her back to work until or unless she had a release that would allow her to at least perform her regular job functions, which would have required at least occasional lifting of 50 pounds. The claimant is on a medical leave of absence for up to one year.

REASONING AND CONCLUSIONS OF LAW:

The underlying issue in this case is whether the claimant is eligible for unemployment insurance benefits by being able and available for employment.

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(2)j(1)(2)(3) provides:

Benefit 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The claimant's current unemployment is due to her being on a leave of absence. She is therefore not eligible for unemployment insurance benefits.

A related issue in this case is whether the period of time in which the claimant has been off work should be treated as a temporary voluntary quit for good cause attributable to the employer.

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:

(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.

A "recovery" under Iowa Code Section 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 has not been released to return to full work duties. Accordingly, the temporary separation was voluntary and without good cause attributable to the employer and benefits must be denied.

DECISION:

The representative's May 13, 2004 decision (reference 02) is modified with no effect on the parties. The claimant was not able and available for work effective October 6, 2003, and the period of temporary separation was voluntary without good cause attributable to the employer. The claimant is not qualified to receive unemployment insurance. The disqualification may be lifted by either earning ten times her weekly benefit amount or by returning to the employer with a release for her full work duties.

ld/b