

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MABLE A BENISSAN
Claimant

APPEAL NO. 12A-UI-11750-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC
Employer

OC: 08/26/12
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Mable Benissan (claimant) appealed a representative's September 24, 2012 decision (reference 04) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Schenker Logistics (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 25, 2012. The claimant participated personally. The employer participated by Nicki Brick, Human Resource Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 31, 2011, as a full-time case pick operator. On January 22, 2012, the claimant quit work to become a full-time student. Continued work was available had the claimant not resigned.

The claimant stopped being a student in February 2012, but her doctor told her not to work. The claimant gave birth to a child on September 23, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5-1 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.

871 IAC 24.25(26) 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:

(26) The claimant left to go to school.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intent to leave employment was evidenced by her words and actions. She told the employer that she was quitting and voluntarily quit work. When a claimant quits work to return to school, the leaving is without good cause attributable to the employer. The claimant quit work to return to school. Her leaving is without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

871 IAC 24.23(5) provides:

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

When an employee is devoting time and effort to being a full-time student, she is considered to be unavailable for work. The claimant was devoting her time and efforts to being a full-time student. She is considered to be unavailable for work after January 22, 2012. The claimant is disqualified from receiving unemployment insurance benefits from January 22 through February, 2012, due to her unavailability for work.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant was expecting a child and had her baby. She is considered to be unavailable for work until she provides a release to return to work by her physician. The claimant is disqualified from receiving unemployment insurance benefits due to unavailability for work.

DECISION:

The representative's September 24, 2012 decision (reference 04) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is not able and available for work until she provides a release to return to work by her physician to the department.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs