

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LISA K HILLER**  
Claimant

**APPEAL NO. 10A-UI-07674-S2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RIVERSIDE CASINO AND GOLF RESORT**  
Employer

**OC: 04/18/10**  
**Claimant: Appellant (2)**

Section 96.5-1-d – Voluntary Quit for Medical Reasons  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Lisa Hiller (claimant) appealed a representative's May 12, 2010 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Riverside Casino and Golf Resort (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for July 12, 2010, in Cedar Rapids, Iowa. The claimant participated personally. The employer did not appear for the hearing.

**ISSUE:**

The issue is whether the claimant is denied unemployment insurance benefits because she voluntarily quit work without good cause attributable to the employer. In addition whether the claimant is able and available for work.

**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 September 13, 2006, as a part-time environmental services person. The claimant worked through April 7, 2010. On April 8, 2010, she had surgery for carpal tunnel that she believed was work related. The claimant did not report the medical issue to the employer as a work related injury. The claimant notified the employer of her need for time off and the employer consented to the claimant's absence. On May 12, 2010, the claimant was released by her physician to return to work without restrictions. The employer had no work available for her.

**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-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.

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). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982).

The claimant left work due to an injury under the advice of her physician. The employer consented to her leaving. The claimant provided the employer with certification that she has recovered. In addition the claimant offered her services to the employer. The claimant has met the requirements of the statute and, therefore, is eligible to receive unemployment insurance benefits.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she is as of May 12, 2010.

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 released to return to work without restrictions by her physician on May 12, 2010. She is considered to be available for work on May 12, 2010, because her physician stated she was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits as of May 12, 2010.

**DECISION:**

The representative's May 12, 2010 decision (reference 01) is reversed. The claimant has met the requirements of the statute and, therefore, is eligible to receive unemployment insurance benefits. The claimant is not disqualified from receiving unemployment insurance benefits as of May 12, 2010.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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