IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CHRISTINE TAYLOR
Claimant

LEE COUNTY
Employer

APPEAL NO. 12A-UI-02320-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/22/12
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Christine Taylor filed a timely appeal from the March 2, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 26, 2012. Ms. Taylor participated. Julie Schilling represented the employer and presented additional testimony through Teresa Gilbert. Exhibits Three, Five and Eight were received into evidence.

ISSUES:

Whether Ms. Taylor separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

Whether Ms. Taylor has been able to work and available for work since she established her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Christine Taylor was employed by the Lee County Health Department as a part-time home care aide from September 2010 and last performed work for the employer on or about September 15, 2011. Ms. Taylor generally worked 10-20 hours per week. Ms. Taylor's immediate supervisor was Teresa Gilbert, Homecare and Hospice Program Director. Ms. Taylor was six months pregnant at the time she last performed work for the employer. Ms. Taylor was experiencing some health problems with the pregnancy that prompted her doctor to restrict her to performing light duty that involved no lifting greater than 25 pounds and no prolonged bending or stooping. Ms. Taylor had three or four assigned clients at the time and was unable to perform her duties for those clients with the work restrictions imposed by her doctor. Ms. Taylor provided the employer with appropriate medical documentation concerning her restrictions. The employer determined that it had no light-duty work for Ms. Taylor outside of a two-hour per week laundry assignment for which Ms. Taylor would need to drive 40 miles from Burlington to Keokuk.

On September 19, 2011, Ms. Taylor commenced an approved medical leave of absence under the Family and Medical Leave Act (FMLA). Ms. Taylor provided the employer with appropriate

medical documentation in support for her need to be off work. The FMLA leave was set to expire on December 9, 2011. During the leave, Ms. Taylor appeared at the workplace for mandatory training and offered to perform office duties.

Toward the end of November 2011, Ms. Taylor contacted Julie Schilling, Administrator for the Lee County Health Department, to discuss the impending expiration of her FMLA leave and her need for additional leave beyond December 9, 2011. Ms. Taylor told Ms. Schilling that her baby was not due until December 12. Ms. Taylor had not yet been released by her doctor to return to work. Ms. Schilling directed Ms. Taylor to submit a request for additional non-FMLA leave and Ms. Taylor did that. Ms. Taylor indicated in her written request that she was requesting additional leave to start on December 9, 2011 and to end when her doctor released her to return to work after the birth of her baby. The employer received the request for additional leave on December 9, 2011.

Ms. Taylor gave birth on December 11, 2011. On December 12, Ms. Taylor contacted Ms. Gilbert. Ms. Taylor told Ms. Gilbert that she was going to speak with her doctor about how soon she could come back to work. Ms. Taylor told Ms. Gilbert that she wanted to come back to work within two weeks. Ms. Taylor now had four children to support and needed an income. Ms. Gilbert told Ms. Taylor that she would speak with the scheduler and get back to Ms. Taylor.

Ms. Taylor waited, but did not hear back from the employer. Ms. Taylor contacted Ms. Gilbert again on December 15, 2011 to inquire about her job. Ms. Gilbert told Ms. Taylor that the employer had just sent a letter to Ms. Taylor on December 14 advising that she had exhausted her 12 weeks of FMLA leave and that the employer was not able to keep her position open. Ms. Gilbert told Ms. Taylor that her request for additional leave was denied. The employer ended the employment because Ms. Gilbert had not returned to work upon the expiration of her FMLA leave of absence.

The employer's written leave policy indicated that the agency was not required to keep a position open beyond the 12-week FMLA period and that failure to return at the end of the leave period would be deemed a voluntary quit.

Despite Ms. Taylor's efforts to get her doctor to release her so that she could return to work, Ms. Taylor's doctor did not release her to return to work until January 22, 2012, exactly six weeks after the birth of the baby. At that point, Ms. Taylor was released to return to work without restrictions.

Ms. Taylor waited to file a claim for unemployment insurance benefits until she was released to return to work. Ms. Taylor established a claim for benefits that was deemed effective January 22, 2012. Ms. Taylor had started her job search as soon as she learned in December that the employer was ending the employment relationship. Since Ms. Taylor established her claim for benefits, she has actively looked for work in the Burlington area. Ms. Taylor has had several interviews, but has not yet obtained new employment. Ms. Taylor is seeking full-time employment with first or second shift hours.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence does not establish a voluntary quit. This case is remarkably similar to a recent, as yet unpublished, case decided by the Iowa Court of Appeals. See Prairie Ridge Addiction Treatment Services vs. Sandra K. Jackson and Employment Appeal Board, No. 1-874/11-0784 (Iowa Ct. App. 2012). The Court's opinion is available to the public at the Iowa Judicial Branch's website: www.iowacourts.gov. Prairie Ridge provides guidance about how the present case should be analyzed and decided. In Prairie Ridge, the claimant had been approved for a period of medical leave, had not been released to return to work by the expiration date of the leave, and had asked the employer to extend the leave. The employer replied that it was sorry the claimant was not able to return to work as soon as anticipated, but the demands on the employer required additional staff and the employer was terminating the employment. The Court concluded that claimant had been discharged from the employment and had not in fact voluntarily quit. The Court went on to hold that since there had been no voluntary quit, the provisions in Iowa Code section 96.5(1)(d), pertaining to voluntary quits for medical purposes, simply did not apply and the claimant was not obligate to return to the employer to offer her services after fully recovering from her illness.

The Court's decision in Prairie Ridge clearly indicates that the lower ruling in this matter was in error.

The evidence in the record establishes that Ms. Taylor had no intention to voluntarily quit the employment and that she communicated this to the employer on multiple occasions. Nor did Ms. Taylor's actions indicate an intention to voluntarily separate from the employer. At the end of the 12 weeks of FMLA, the employer elected to end the employment despite the request for an extension of the leave and despite knowing that Ms. Taylor had not yet given birth and had not yet been released to return to work. Ms. Taylor was discharged from the employment effective December 9, 2011.

The employer's written policy concerning failure to return at the end of the FMLA leave period cannot and does not change the nature of Ms. Taylor's separation from a discharge to a voluntary quit. The policy, and the law, presupposes that the worker has been released to return to work. Absent that, that evidence does not establish a voluntary separation. Ms. Taylor had not yet been released to return to work at the time the employer ended the employment relationship.

The discharge was not based on misconduct and would not disqualify Ms. Taylor for unemployment insurance benefits. See Iowa Code section 96.5(2)(a) and 871 IAC 24.32(1)(a). Because Ms. Taylor was discharged for no disqualifying reason, Ms. Taylor is eligible for unemployment insurance benefits, provided she meeting all other eligibility requirements. The employer's account may be charged for benefits.

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:
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> 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(1)a AND (2) provide:

> Benefits 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.
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> (1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.
>
> a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.
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> (2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual

> offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Because Ms. Taylor was discharged from her employment with Lee County before she established her claim for benefits, she is not required to make herself available for employment with Lee County in order to prove her availability for work.

The weight of the evidence indicates that Ms. Taylor has been released to work without restrictions since she established her claim for benefits. The weight of the evidence indicates that Ms. Taylor has been actively engaged in a search for new full-time employment since she established her claim for benefits. Ms. Taylor has been able to work and available for since she established her claim for benefits and is eligible for benefits, provided she is otherwise eligible.

DECISION:

The Agency representative's March 2, 2012, reference 01, decision is reversed. The claimant was discharged effective December 9, 2011, for no disqualifying reason. The claimant has been able to work and available for work since she established her claim. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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