

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA A RYAN
Claimant

APPEAL NO. 08A-UI-06685-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A TO Z CORPORATION
A TO Z DAYCARE & LEARNING CENTER
Employer

OC: 05/18/08 R: 03
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Barbara Ryan filed an appeal from a representative's decision dated June 11, 2008, reference 01, which denied benefits based upon her separation from A to Z Corporation. After due notice was issued, a hearing was held by telephone on August 5, 2008. A continuation of the hearing took place on August 20, 2008. Ms. Ryan participated personally. The employer participated by Christine York, Executive Director and Jennifer Smith, the claimant's supervisor. Employer's Exhibits A through I were received into evidence and Claimant's Exhibits 1 through 19 and 20 through 31 were received into evidence.

ISSUE:

The issue in this matter is whether Ms. Ryan quit employment with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from September 2006 until February 25, 2008. Ms. Ryan was employed as a part-time childcare worker averaging approximately 35 hours of work per week. Her immediate supervisor was Jennifer Smith.

On February 25, 2008, the claimant indicated that her foot had fallen asleep and that she had injured her foot attempting to walk while at work and was initially off work with a doctor's excuse and was to return on March 3, 2008. On March 3, the claimant indicated that she would be returning March 11. The claimant did not report back to work on March 11. A number of calls were placed by the employer attempting to determine Ms. Ryan's status while she was on leave because of her medical condition. The claimant interpreted these requests as requests for a return date. No additional medical documentation was submitted to the employer. The claimant continued under medical care for an extended period of time and the employer periodically requested the claimant provide medical information to the employer so the claimant's status and potential return date could be more clearly determined. The employer offered the claimant light-duty assignments that required no standing or movement and believed that the claimant was

unjustifiably refusing to accept the light-duty offers as Ms. Ryan was performing babysitting duties at times for other individuals while away from her employment at A to Z Corporation on a medical leave. The claimant was unavailable to receive any communication for a period of time due to illness in the family and her inability to receive mail timely.

After repeated requests to provide documentation to the company went unheeded, the employer reasonably concluded the claimant had relinquished her position with the company as she was not calling in on regular basis and medical documentation had not been provided to explain her continuing absence from work. Based upon the claimant's failure to report for work and her failure to provide any additional necessary notification, the claimant was replaced and another worker hired.

The claimant's delay in filing her appeal was occasioned by mistake or inadvertence on the part of a Workforce Development employee or mechanical malfunctions that caused the claimant's appeal not to be filed timely. The claimant appears to be able and available for work effective the date that she filed her claim. As the claimant had not returned from her leave of absence and had supplied no medical documentation to support the claimant's conclusion that she was unable to do so, it was determined that the claimant had voluntarily quit her employment effective February 25, 2008, her last day of work before medical leave.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Ryan voluntarily quit employment for reasons attributable to the employer. It does not.

The evidence in this case establishes that Ms. Ryan initially sustained a foot injury on or about February 25, 2008 when her foot fell asleep and she attempted to walk on it at work. The claimant initially left work under an approved leave because of her injury and was scheduled to return to work on March 3, 2008 but did not do so. The claimant indicated that she needed to be off work for a longer period of time and the employer agreed. Although the evidence is contradicted as to whether the employer was requesting additional medical statements, the administrative law judge concludes that the claimant's testimony with respect to this matter strains credibility. The employer's witnesses testified that they repeatedly requested a medical statement indicating they needed the claimant's status, return date or other pertinent information so that the employer could preserve staffing ratios for employees and continued to hold the claimant's job position open for her. When the claimant did not respond to repeated efforts on the part of the employer to obtain additional medical evidence or a clear statement as to the claimant's status and possible return dates, the employer reasonably concluded that the claimant had chosen to voluntarily quit her employment. The claimant had failed to report for scheduled work and had provided no notification to the employer for an extended period of time leading the employer to the reasonable conclusion that Ms. Ryan was choosing to relinquish her position with A to Z Daycare & Learning Center. The employer had repeatedly offered the claimant light-duty assignments and the claimant had chosen not to accept them although she was performing other services on at least one occasion of a similar nature for a private individual.

871 IAC 24.22(2)j(1)(2) provides:

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.

(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.

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.

For the reasons stated herein the administrative law judge concludes that the claimant relinquished her position with A to Z Corporation for reasons that were not attributable to the employer. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated June 11, 2008, reference 01, is hereby affirmed. The claimant had voluntarily quit employment for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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