

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONNA M NEWHARD**  
Claimant

**APPEAL NO. 12A-UI-11961-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENTLE DENTAL**  
Employer

**OC: 09/09/12**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Donna Newhard (claimant) appealed a representative's September 28, 2012 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Gentle Dental (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 30, 2012. The claimant participated personally and through her husband, Roger Newhard. The employer participated by Stefanie Breslin, Office Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason and 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 February 16, 1998, as a full-time dental assistant/sterilizer. On June 18, 2012, the claimant suffered from a medical condition and went to the emergency room. She was diagnosed with cancer, had surgery, and is undergoing chemotherapy. The claimant has a number of physicians. She has been released by some physicians to return to work with restrictions. Her oncologist has not released the claimant to return to work.

**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). 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 left work due to an injury under the advice of her physician. The employer consented to her leaving. The claimant has failed to provide the employer with certification that she has recovered. The claimant has failed to meet the requirements of the statute and, therefore, is not 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 not.

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. All the claimant's physicians have not released her to return to work. She is considered to be unavailable for work after June 18, 2012. The claimant is disqualified from receiving unemployment insurance benefits beginning June 18, 2012, due to her unavailability for work.

**DECISION:**

The representative's September 28, 2012 decision (reference 01) 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 disqualified from receiving unemployment insurance benefits beginning June 18, 2012, due to her unavailability for work.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs