IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ERIN RYHERD
Claimant

MERCY HOSPITAL
Employer

APPEAL NO: 08A-UI-10343-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/05/08 R: 02
Claimant: Respondent (1)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.22(2)j – Leave of Absence
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Mercy Hospital (employer) appealed a representative's October 27, 2008 decision (reference 01) that concluded Erin Ryherd (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 19, 2008. The claimant received the hearing notice and responded by calling the Appeals Section on November 7, 2008. She indicated that she would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, she was not available; therefore, the claimant did not participate in the hearing. Patti Steelman appeared on the employer's behalf and presented testimony from one other witness, Carolyn Burt. During the hearing, Employer's Exhibits One and Two and Exhibit A-1 were entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 2, 2007. She worked full time as an emergency department technician in the employer's Des Moines, Iowa hospital. Her last day of work was March 9, 2008. She started a FMLA (Family Medical Leave) at that point due to a non-work-related medical condition. After the expiration of the FMLA, she took additional short term disability/medical leave. That leave expired on September 16, 2008.

On June 11, 2008 the employer had confirmed to the claimant by letter, received by the claimant on June 12, that the FMLA had expired but was being placed on the additional 12 week medical leave of absence allowed by the employer. She was further advised that if she

was unable to return to work in a comparable position at the end of that period and had not otherwise qualified for any long-term disability, her employment would end.

Prior to September 16, on about August 13 the claimant contacted the employer's disability coordinator. She was told she needed to provide a doctor's release and be cleared through employee health. A release from the claimant's doctor with no restrictions was provided to the employer on August 13. However, since the claimant had not contacted employee health and gone through a review for returning to work, the employer considered that the claimant had not complied with the requirements to return to work during her leave, and as of September 16 deemed her to have voluntarily quit by failing to return to work at the end of the leave period.

Shortly after September 16 the claimant contacted an employee relations coordinator with the employer and discussed returning to work. The coordinator advised the claimant that since she had not returned by September 16 she was deemed to have voluntarily quit and could no longer apply for a position as an internal candidate, but could apply as an external candidate. In October the claimant did apply for an open position as a medical technician in another department. However, even though the claimant was being treated as applying as an external candidate, because the claimant had not gone through the employee health clearance that was to have been required of her had she returned during the leave, the claimant was not considered for the position.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits, and conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

Here, the claimant failed to return at the end of the leave of absence, and is therefore deemed to have voluntarily quit the employment. Where the quit is for a non-work-related medical or health reasons, the quit is disqualifying at least until the claimant has recovered and seeks to return to work. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b.

The law only states that the claimant is released to return to work by her physician without restriction, and in fact does attempt to return to work with the employer. Here, the claimant was released to return to work without restriction and she did seek to return to work with the employer. Even though the employer then viewed the claimant as an "external" candidate for employment, it sought to impose an additional requirement beyond that provided by law that the claimant go through the employee health clearance not required of external applicants. The employer had no specific grounds to question the validity of the physician's release without restriction, which is prima facie evidence of her ability to do the job. 871 IAC 24.22(2)1(a). "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment

Appeal Board, 433 N.W.2d 700 (Iowa1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Even though the employer had a good business reason for proceeding to fill the claimant's position, the separation is with good cause attributable to the employer and benefits are allowed.

DECISION:

The representative's October 27, 2008 decision (reference 01) is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, if the claimant is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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