

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PERLA NAVARRO

Claimant

APPEAL NO. 13A-UI-09344-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 07/21/13

Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Perla Navarro filed a timely appeal from the August 13, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was started on September 18, 2013 and completed on September 25, 2013. Claimant Perla Navarro participated. Luis Meza represented the employer and presented additional testimony through Lizeth Ibarro. Spanish-English interpreters Patricia Vargas and Rafael Geronimo assisted with the hearing. Exhibits A through D were received into evidence.

ISSUES:

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

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Perla Navarro was employed by Swift Pork Company, also known as JBS, as a full-time production worker from 2008 and last performed work for the employer on November 28, 2012. At that time, Ms. Navarro commenced an approved leave of absence in connection with a problem pregnancy. Ms. Navarro continued on a medical leave after the birth of her child, due to postpartum depression. Ms. Navarro provided doctor's notes to continue the leave of absence through May 20, 2013. According to the doctor's notes Ms. Navarro had provided to the employer, she was released to return to work effective May 21, 2013.

On July 18, 2013, when Ms. Navarro had still not returned to the employment and had not made any contact with the employer since she provided the May 15, 2013 doctor's note that extended her leave through May 20, 2013, the employer deemed the employment terminated. On July 24, 2013 a third-party benefits administrator sent Ms. Navarro written notice of her COBRA rights. On or about July 29, 2013, Ms. Navarro contacted the employer with a question about

her insurance. At that time Ms. Navarro asked Human Resources Coordinator Lizeth Ibarra whether the employer still had work for her and Ms. Ibarra said no. Ms. Navarro asked Ms. Ibarra what she could do about returning to work and Ms. Ibarra directed Ms. Navarro to speak to the union. The employer did not hear further about the matter from Ms. Navarro or the union.

Ms. Navarro established a claim for unemployment insurance benefits that was effective July 21, 2013, after she received notice from the employer that the employer deemed the employment done. In August 2013, Ms. Navarro notified Iowa Workforce Development that she was waiting to have surgery on her ear to repair a burst ear drum and that the surgery was scheduled for September 27, 2013. Ms. Navarro also told Iowa Workforce Development that she had decided to return to school to obtain her G.E.D. Ms. Navarro has been taking an English language class that meets three hours a day Monday through Thursday. Ms. Navarro's job search has been limited to the contact with JBS at the end of July, an application to the Iowa Veterans' Home during the week that ended July 27, 2013, and an interview that Ms. Navarro represented was to take place on Friday, September 26, 2013.

REASONING AND CONCLUSIONS OF LAW:

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.

Workforce Development rule 817 IAC 24.26(6)(a) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

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.

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. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, 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. 871 IAC 24.22(j)(2).

The evidence in the record indicates that Ms. Navarro voluntarily quit the employment without good cause attributable to the employer when she failed to return to work on or about May 21, 2013. Ms. Navarro's leave period had expired on May 20, 2013, the last for which Ms. Navarro had a medical basis, documented by her doctor, for being away from the work. The employer waited almost a full two months beyond the May 20, 2013 leave end date for Ms. Navarro to return to the employment, but Ms. Navarro did not attempt to return during that period. Ms. Navarro is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not 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:

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.

(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.

(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.

Ms. Navarro has failed to demonstrate compliance with the requirements that she be able to work, available for work and actively and earnestly seeking new employment. Since Ms. Navarro applied for benefits she has had a total of two job contacts. She has been awaiting a surgery to repair her ear drum. She had been attending classes three hours a day, five days a week, rather than making an active and earnest search for new employment. Based on the availability issue provides a second basis for disqualifying Ms. Navarro for benefits effective July 21, 2013. This disqualification continued as of the conclusion of the appeal hearing on September 25, 2013.

DECISION:

The agency representatives August 13, 2013, reference 01, decision is affirmed. Effective May 21, 2013, the claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

The claimant has not met the able and available requirements since she filed her claim for benefits. Benefits are denied effective July 21, 2013. This disqualification continued as of the conclusion of the appeal hearing on September 25, 2013.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css