

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NIKOLE A DAEHLER
Claimant

APPEAL NO: 14A-UI-06156-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY CARE INC
Employer

OC: 05/04/14
Claimant: Respondent (5/R)

Section 96.5-1-i – Voluntary Quit/Segregable Business Sale
Section 96.5-3(a) – Suitable Offer of Work
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 3, 2014 (reference 01) that held claimant was laid-off due to a lack of work on May 7, 2014 and benefits are allowed. A telephone hearing was held on July 9, 2014. The claimant participated. Kelli Schmidt, HR Director, and Dara Fishnick, Director, participated for DAC INC. Employer Exhibit One was received as evidence.

ISSUES:

The issue is whether claimant voluntarily quit with good cause attributable to the employer.

The issue is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on October 8, 2012 and last worked for the employer/Community Care (CCI) as a full-time support staff professional on May 7, 2014. The employer was the subject of government legal action for Medicaid fraud and its' funding was cut. When the employer ran out of money to conduct business and lost its state facility licensing, the business operation was acquired by DAC INC.

A DAC Inc. representative interviewed claimant about continuing employment and she attended a meeting where it was discussed. Claimant was told her start pay would be \$11.00 an hour for the same job. She rejected the offer as she had been making \$12.98. There was a further communication between claimant and Director Fishnick about continuing employment on April 28, but claimant did not receive an employment offer letter before she left on May 7, because it believed claimant had declined continuing employment.

While employed at CCI, claimant prepared an FMLA application due to her pregnancy with an expected due date of June 25. Claimant planned to work up to her delivery date. DAC knew about this issue and it told claimant she could reapply for her job after she had been released for work. Claimant delivered her child on June 8. She expects a doctor release to return to work on July 22, 2014.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1-i 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:

i. The individual is unemployed as a result of the individual's employer selling or otherwise transferring a clearly segregable and identifiable part of the employer's business or enterprise to another employer which does not make an offer of suitable work to the individual as provided under subsection 3. However, if the individual does accept, and works in and is paid wages for, suitable work with the acquiring employer, the benefits paid which are based on the wages paid by the transferring employer shall be charged to the unemployment compensation fund provided that the acquiring employer has not received, or will not receive, a partial transfer of experience under the provisions of § 96.7, subsection 2, paragraph "b". Relief of charges under this paragraph applies to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

The administrative law judge concludes claimant voluntarily quit with good cause on May 7, 2014 when Community Care transferred its business to DAC Inc. and it did not offer claimant suitable work.

While it appears this was a forced or involuntary transfer of the business operation rather than a voluntary sale, the key issue is whether employer communicated a suitable offer of work to claimant.

The employer prepared written job offer letters but it did not submit one to claimant because it believed she had said she did not want to continue employment. Claimant spoke with a DAC representative about continuing employment who did not offer the same job at the same wage. The employer had prepared an offer of employment letter dated April 29 but it was not offered.

Iowa Code § 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse

to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

- (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
- (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The administrative law judge further concludes the employer did not make a suitable offer of work to claimant. The employer could have provided claimant with a written letter job offer as it did other prospective employees but did not do so.

Iowa Code § 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".

The administrative law judge further concludes the issue whether claimant was able and available for work due to pregnancy from June 8, 2014 is remanded to claims for fact finding and decision.

DECISION:

The department decision dated June 3, 2014 (reference 01) is modified without effect. Claimant voluntarily quit with good cause May 7, 2014 after the employer acquired business by transfer and its employer did not offer claimant suitable work. Benefits are allowed, provided the claimant is otherwise eligible. The able and available for work issue is remanded to claims.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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