

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NATASHA L AJETI

Claimant

APPEAL 18A-UI-08949-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 07/29/18

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Able and Available to Work
Iowa Admin Code r. 871-24.22 – Benefit Eligibility Conditions
Iowa Admin Code r. 871-24.25 – Voluntary Quit Without Good Cause

STATEMENT OF THE CASE:

Natasha Ajeti, Claimant, filed an appeal from the August 21, 2018, (reference 02) unemployment insurance decision that denied benefits because she voluntarily quit work with The University of Iowa without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on September 19, 2018 at 11:00 a.m. Claimant participated. Employer participated through Mary Eggenburg, Benefits Specialist. No exhibits were admitted.

ISSUES:

1. Whether claimant was able to and available for work.
2. Whether claimant's separation was a voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time as a staff nurse for the University of Iowa from October 10, 2016 until her employment ended on July 2, 2018. (Eggenburg Testimony; Claimant Testimony) The last day claimant worked for employer was April 9, 2018. (Claimant Testimony)

On April 10, 2018, claimant sustained an injury while working for another employer. (Claimant Testimony) Claimant informed employer of her injury and requested leave from work. (Claimant Testimony) On April 15, 2018, claimant applied and was approved for medical leave with employer. (Claimant Testimony)

On April 30, 2018, claimant's physician released claimant to work with the following restrictions: claimant could not lift greater than 10 pounds; claimant could bend, kneel and stoop as tolerated; and claimant must sit and stand as needed. (Claimant Testimony) Claimant could not

necessarily complete all of her duties as a staff nurse with these restrictions. (Claimant Testimony) Claimant sought other work with employer that would accommodate these restrictions (e.g. performing audits, working as a charge nurse, passing medication or performing assessments), but none was available. (Claimant Testimony)

On July 2, 2018, claimant spoke with human resources regarding her medical leave. (Claimant Testimony) Employer requested a more recent physician's statement regarding claimant's restrictions for returning to work. (Claimant Testimony) The employer informed claimant that it allows up to 90 days of medical leave and that without a more recent physician's statement the medical leave and claimant's employment would come to an end. (Claimant Testimony) Claimant was unable to obtain the physician's statement; in an effort to avoid termination and retain the ability to work for employer in the future, claimant resigned her employment on July 2, 2018. (Claimant Testimony; Eggenburg Testimony) There was no other reason for claimant's resignation. (Claimant Testimony)

Since filing her original claim on July 29, 2018, claimant has been able to work within the restrictions described above. (Claimant Testimony) Last week, claimant's restrictions were lessened to lifting greater than 20 pounds and sitting and standing as needed. (Claimant Testimony) With these restrictions, claimant could have performed the duties of a charge nurse or telephone nurse; claimant could have performed the duties of a staff nurse with minimal accommodations. (Claimant Testimony) Claimant has remained in the same geographical area, has transportation to and from work and has no restriction on her work hours. (Claimant Testimony) Claimant is actively seeking employment and has applied for several nursing positions. (Claimant Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was able and available for work since filing her original claim on July 29, 2018; however, claimant voluntarily quit work without good cause attributable to the employer. As a result, benefits are denied.

1. Whether claimant was able to and available for work.

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 . . . [t]he individual is able to work, is available for work, and is earnestly and actively seeking work."

Iowa Admin. Code r. 871-24.22(1)(a), (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.

(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.

(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.

The claimant has the burden of proof to establish his or her ability to and availability for work. *Davoren v. Iowa Emp't Sec. Comm'n*, 277 N.W.2d 602 (Iowa 1979). To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1).

Claimant established that she has been able and available for work, since filing her original unemployment benefit claim on July 29, 2018. The work restrictions imposed by claimant's physician are not so restrictive that the claimant cannot perform any work, given her experience, abilities and training. Claimant identified several jobs that she was able to perform, including a charge nurse or telephone nurse, and specific nursing duties that she can perform, including distributing medication, and performing audits and assessments. Claimant has applied for several jobs that she is able to perform within the work restrictions. Claimant has remained in the same geographical area, has transportation, and has not restricted the hours that she will work. The claimant is able to and available for work, even though she is unable to return to her prior employment as a staff nurse.

2. Whether claimant's separation was a voluntary quit without good cause attributable to the employer.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer. Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.25(35) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence

that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:
- a. obtain the advice of a licensed and practicing physician;
 - b. Obtain certification of release of work from a licenses and practicing physician;
 - c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
 - d. fully recover so that the claimant could perform all of the duties of the job.

Claimant voluntarily quit her employment with the University of Iowa by resigning. Claimant's resignation shows her intention to end her employment – albeit in an attempt to preserve her good standing – and serves as an overt act of carrying out her intention. Claimant's resignation was not with good cause attributable to the employer. Claimant sustained a non-employment related injury, received advice of a licensed physician, obtained a release to return to work from the physician and returned to the University of Iowa and offered her services and the physician's release. However, claimant has not fully recovered. While claimant can fulfill many of her duties as a staff nurse, she cannot perform all of them. As a result, claimant is disqualified for benefits.

DECISION:

Although claimant was able and available for work, claimant's separation from employment is disqualifying because she voluntarily quit without good cause attributable to the employer. The August 21, 2018, (reference 02) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times her weekly benefit amount.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs