

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

DEBRA E MORGAN
Claimant

CARE INITIATIVES
Employer

APPEAL 22A-UI-09803-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/13/22
Claimant: Appellant (4R)**

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Code § 96.4(3) - Able and Available to Work
Iowa Admin. Code r. 871-24.23(1) - Eligibility - A&A - Illness
Iowa Admin. Code r. 871-24.23(2) - Eligibility - A&A - Hospitalized
Iowa Admin. Code r. 871-24.23(6) - Eligibility - A&A - Medical Report

STATEMENT OF THE CASE:

Debra Morgan, claimant/appellant, appealed from the April 14, 2022, (reference 01) unemployment insurance decision that denied benefits based upon her 02/24/22 voluntary quit due to her non-work related illness/injury. The parties were properly notified about the hearing. A telephone hearing was held on June 1, 2022, at 11:00AM. Claimant personally participated. Employer, Care Initiatives, participated through Amelia Gallagher, party representative and Amanda Loesche, benefits and payroll manager. Both parties waived the defect in the notice of hearing, that failed to have included Iowa Code § 96.4(3), able and available to work. By waiving the defect, that code section is now added to the notice of hearing and will be addressed in this appeal. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-09803-DH-T; and 22A-UI-11686-DH-T. Judicial notice was taken of the administrative record. Employer's exhibit R-1 was admitted without objection. Employer's exhibit R-2 was not admitted. Employer's exhibit R-2 was not admitted due to the proposed exhibits being submitted the same day as the hearing. The administrative law judge had not received the exhibits. See Iowa Admin. Code r. 871-26.15(5) which requires:

"Proposed exhibits must be sent to the appeals bureau and to the other party or parties to the proceeding before the hearing date by mail, fax, email or hand-delivery."

ISSUES:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and considered the evidence in the record, the undersigned finds:

Claimant was employed at Care Initiatives, as a fulltime certified med aide (CMA) with a set schedule. Her first day worked was November 5, 2001. Claimant is still employed with employer. Claimant was not laid off, nor discharged from work, nor quit.

Claimant tested positive for COVID-19 at work on December 15, 2021. She was sent home from work per the care facility's policies at that time. Claimant did not feel well and two days later was admitted to the hospital on December 17, 2021. She was hospitalized starting 12/17/21 and discharged from the hospital on 01/05/22.

Claimant was in communication with her employer regarding her ability to return to work, providing doctor notes along the way. The doctor's note provided that she could not return to work until a certain date, but then an updated doctor's note would come along which extended the date out further. This happened a number of times, until the notes added up to stating she could not return to work from 01/05/22 (date of discharge from hospital) through 05/30/22. She was released to return to work without any restrictions on May 31, 2022. Claimant returned to work that day. Sometime after her 01/05/22 hospital discharge and her return to work, claimant was hospitalized again for surgery.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the separation was a layoff, discharge for misconduct or a voluntary quit with good cause attributable to the employer. The undersigned concludes there was no separation from employment as claimant is still employed with employer.

Iowa Code section 96.5(1) 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.

Iowa Admin. Code r. 871-24.25(37) 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:

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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). Where multiple reasons for the quit, which are attributable to the employment, are presented the agency must "consider that all the reasons combined may

constitute good cause for an employee to quit, if the reasons are attributable to the employer.” *McCunn v. Empl. Appeal Bd.*, 451 N.W.2d 510 (Iowa App. 1989) (citing *Taylor v. Iowa Dept. of Job Serv.*, 362 N.W.2d 534 (Iowa 1985)). “An employee may choose to leave employment for several reasons, with each reason important in the decision to quit.” *Taylor*, 362 N.W.2d at 540.

There was no separation from employment as claimant remains employed with employer and both parties agree this is factual. Therefore, claimant is not disqualified from benefits regarding a 02/24/22 voluntary quit as no quit happened.

The next issue is whether claimant was able to and available for work. It is determined that claimant was not able to and available to work for the reasons set forth below.

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".

Iowa Admin. Code r. 871-24.23(1), (2), and (6) 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.

(2) An individual presently in the hospital is deemed not to meet the availability requirements of Iowa Code section 96.4(3) and benefits will be denied until a change in status and the individual can meet the eligibility requirements. Such individual must renew the claim at once if unemployed.

(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.

As set forth in the fact-finding section, from 12/15/21 through 05/30/22, claimant was too ill to work, and/or was hospitalized, and/or had a doctor's letter provided to her employer that she was unable to return to work given her medical condition. Her medical conditions were not work related. Claimant did not request a leave of absence. Employer allowed her a leave and held her position for her given her length of time with the company.

The administrative law judge finds claimant was not otherwise able to and available for work given her illnesses, her hospitalizations, and her time covered by doctor letters advising she was not yet medically able to return to work. This makes claimant ineligible for benefits starting 12/12/21 through 05/28/22.

DECISION:

The April 14, 2022, (reference 01) unemployment insurance decision that denied benefits based upon her 02/24/22 voluntary quit is **MODIFIED** in favor of appellant, by finding claimant remained employed (there was no separation from employment); however, claimant is not eligible for benefits from 12/15/21 through 05/30/22 as she was not able to and available for work.

REMAND:

Because the decision was modified from a voluntary quit to a not being able and available for work, the voluntary quit disqualification is removed. This matter is remanded to the Benefits Bureau for them to determine whether claimant qualifies for benefits for any week a claim was submitted that was denied due to the voluntary quit disqualification, in light of claimants return to work May 31, 2022; and for any interview/investigation and a decision with appeal rights on the issues deemed appropriate, such as whether claimant met the requirements for reemployment activities and job applications for weeks filed and if not, whether she had previously been sent a warning decision, whether wages were correctly reported, whether claimant was able and available for work if working less than fulltime for any week.



Darrin T. Hamilton
Administrative Law Judge

September 9, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.