

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACEY J AULENBACH
Claimant

APPEAL NO. 08A-UI-09192-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOPE HAVEN INC
Employer

**OC: 09/14/08 R: 01
Claimant: Appellant (1)**

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the October 3, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 20, 2008. Claimant participated. Dennis Sassman, Residential Manager, represented the employer.

Claimant filed her appeal on October 10, 2008. The appeal hearing was initially set for October 27, 2008, but was postponed at the claimant's request due to illness. The matter was rescheduled for November 7, 2008, but was again postponed at the claimant's request due to illness. The matter was ultimately set for hearing on Thursday, November 20, 2008. Workforce Development mailed the final hearing notice to the parties on November 7, 2008. On Friday, November 14, claimant sprained her ankle. Thereafter, claimant traveled from Iowa to Florida to stay with relatives while she recovered from the ankle sprain. On November 19, 2008, claimant made contact with the Appeals Section to provide a new telephone number at which she could be reached for the hearing. Claimant did not request a postponement of the hearing three days prior to the start of the hearing as required by the hearing notice and made no request to postpone the hearing until during her testimony. At the time of the hearing, claimant indicated she was not under the influence of any medication that would affect her ability to fully participate in the hearing. Claimant indicated she had documents at her home in Iowa regarding her attempts to contact the employer during and after February 2008. Claimant had not taken reasonable steps to take the referenced documents with her when she traveled to Florida. Claimant had not taken reasonable steps to have the documents forwarded to her prior to the hearing. Claimant indicated that it would take up six weeks to obtain the referenced documents. The claimant had been given a reasonable opportunity to prepare for the hearing. The claimant's untimely request to reschedule the hearing a third time, this time for up to six weeks, was denied.

ISSUE:

Whether the claimant voluntarily quit or was discharged from the employment. The administrative law judge concludes that the claimant voluntarily quit.

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tracey Aulenbach was employed by Hope Haven, Inc., as a full-time instructor until January 8, 2008. Shortly before that date, Ms. Aulenbach notified the employer that she needed to travel to Pennsylvania to care for her ailing grandmother. To leave open the possibility of Ms. Aulenbach returning to the employment, the employer agreed to reclassify Ms. Aulenbach as a part-time, on-call employee. Ms. Aulenbach returned to Iowa in February 2008, after her grandmother had passed away. After Ms. Aulenbach departed for Pennsylvania, the employer did not hear from her again. Ms. Aulenbach has multiple phone numbers she could use to contact the employer. Ms. Aulenbach also had the ability to contact multiple employer representatives to indicate her availability for work. On June 23, 2008, the employer mailed Ms. Aulenbach a letter indicating the employer considered the employment terminated after six months with no contact from Ms. Aulenbach. Even after Ms. Aulenbach received this letter, the employer still did not hear from her.

Ms. Aulenbach established a claim for benefits that was effective September 14, 2008, nine months after she had last performed work for the employer and almost three months after the employer sent a termination letter. She filed her appeal on October 10, 2008. The appeal hearing was initially set for October 27, 2008, but was postponed at the claimant's request due to illness. The matter was rescheduled for November 7, 2008, but was again postponed at the claimant's request due to illness. The matter was ultimately set for hearing on Thursday, November 20, 2008. On Friday, November 14, claimant sprained her ankle. Thereafter, claimant traveled from Iowa to Florida to stay with relatives while she recovered from the ankle sprain. Claimant was still staying with relatives in Florida at the time of the November 20 hearing and had no definite plans to return to Iowa. Claimant continues under the care of a physician while she recovers from her ankle sprain and has not been released to work.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge must determine whether Ms. Aulenbach voluntarily quit or was discharged from the employment. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

Iowa Code section 96.5-1-c 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

The weight of the evidence indicates that Ms. Aulenbach initiated the separation from the employment, so that she could travel to Pennsylvania in early January 2008 to care for her grandmother. The weight of the evidence indicates that Ms. Aulenbach's grandmother passed away before Ms. Aulenbach returned to Iowa in February 2008. The weight of the evidence indicates that Ms. Aulenbach did not in fact take reasonable steps to notify the employer of her return to Iowa or her availability for work. Ms. Aulenbach asserts she left multiple messages for supervisors, but the weight of the evidence does not support this assertion. Ms. Aulenbach asserts she did not call Dennis Sassman, Residential Manager, because she did not want to step outside the chain of command. The weight of the evidence fails to establish that this was the basis for Ms. Aulenbach's lack of meaningful contact with the employer. The weight of the evidence indicates that Ms. Aulenbach never made meaningful contact with the employer, even after receiving the termination letter in June 2008. Workforce Development records indicate that Ms. Aulenbach did not establish a claim for benefits until September 14, 2008. The weight of the evidence indicates that Ms. Aulenbach was not motivated to return to the employer or to gain new employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Aulenbach voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Aulenbach 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 paid to Ms. Aulenbach.

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.

Workforce Development rule 871 IAC 24.23 provides, in relevant part, as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(1) An individual who is ill and presently not able to perform work due to illness.

24.23(34) Where the claimant is not able to work due to personal injury.

24.23(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

The weight of the evidence in the record indicates that the claimant has not been able and available for work since establishing her claim for unemployment insurance benefits. Accordingly, the claimant is not eligible for benefits.

DECISION:

The Agency representative's October 3, 2008, reference 01, decision is affirmed. 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 been able and available for work since establishing her claim for benefits and continues to not be able and available for work as of the entry of this decision. Accordingly, the claimant is not eligible for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw