

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

MICHELLE R VOUGHT

Claimant

and

MATTHEW J MAGGIO DDS PC

Employer

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HEARING NUMBER: 17BUI-04891

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2A, 24.32-7

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Employment Appeal Board would modify the administrative law judge's Reasoning and Conclusions of Law to include the following as supportive legal analysis:

Iowa Code section 96.5(1) "c" provides:

An individual shall be disqualified for benefits: *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:

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 Claimant was terminated before she had a chance to return to the Employer. The court in Porazil v. Jackman Corporation, August 27, 2003, Court of Appeals Unpublished Case No. 3-408/02-1583 held that a Claimant who is terminated prior to a return from a leave of absence is not obligated to return to the Employer to offer services after the expiration of the leave of absence. The rationale being that the Claimant no longer has an employment relationship to which the Claimant can return.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv