

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EVIN NIBLOCK

Claimant

APPEAL 21A-UI-03070-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC

Employer

OC: 09/13/20

Claimant: Respondent (2)

Iowa Code section 96.5(1)d– Voluntary Quit / Non-Work Related Medical
Iowa Code § 96.3(7) Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from the January 12, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on March 16, 2021. Claimant did not participate. Employer participated through Human Resources Generalist Stephanie Rohrer and Assistant Grocery Manager Chris Franken. The administrative law judge took official notice of the agency records. Exhibit 1 was admitted into the record.

ISSUE:

Was the separation a layoff, discharge for misconduct or 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:

The claimant was employed part-time as a grocery clerk from February 7, 2020, until she was separated from employment on February 21, 2020, when she quit. The claimant's immediate supervisor was Store Manager Wayne Lamoureux.

On February 21, 2020, the claimant submitted her resignation to Assistant Grocery Manager Chris Franken and Store Manager Wayne Lamoureux. The employer provided a copy of a separation information form. On the form, the claimant wrote she left on her own accord and provided the following explanation, "Diagnosed with issue from cancer." (Exhibit 1)

The administrative records show the claimant was not paid unemployment insurance benefits.

The fact finding documents show Payroll Manager Maggie Worrall participated in the fact finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer. The claimant was not paid benefits, so the issue of overpayment is moot.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:


d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to medical condition under the advice of physician. The employer consented to leaving. The claimant has failed to provide the employer with certification that she has recovered. In addition the claimant has failed to offer services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits. The claimant may re-qualify by returning to the employer with an unconditional release. The claimant could then receive benefits if regular work or comparable suitable work was not available. Benefits are denied. The claimant was not paid benefits, so the issue of overpayment is moot.

DECISION:

The January 12, 2021, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily quit without good cause attributable to the employer. Benefits are withheld until such time as 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 claimant was not paid benefits, so the issue of overpayment is moot.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

March 18, 2021
Decision Dated and Mailed

smn/ol