

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TAISSIR A ABDELGADIR
Claimant

APPEAL NO. 18A-UI-02545-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC
Employer

OC: 01/07/18
Claimant: Respondent (2)

Section 96.5-1-d - Voluntary Quit for Medical Reasons
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Remedy Intelligent Staffing (employer) appealed a representative's February 16, 2018, decision (reference 02) that concluded Taissir Abdelgadir (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 21, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Aurea Nigaglioni, Staffing Consultant. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a staffing agency. The claimant performed services off and on from October 1, 2016, through September 5, 2017. On September 8, 2017, the claimant told the employer she was involved in a car accident and suffered injuries to her back and neck. Her physician placed her on restrictions and she could no longer work at her assignment. The employer told the claimant to provide it with verification of her release to return to work without restrictions. The claimant sought work from the employer on January 9, 2018, but did not provide the employer with a medical release to return to work. The employer will return the claimant to work if she provides a release to return to work without restrictions.

The claimant filed for unemployment insurance benefits with an effective date of January 7, 2018. She did not receive any unemployment insurance benefits after her separation from employment. The employer participated personally at the fact finding interview on February 15, 2018, by Keyshona Frick.

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.

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 an injury under the advice of her physician. The employer consented to her leaving. The claimant has failed to provide the employer with certification that she has recovered. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's February 16, 2018, decision (reference 02) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs