

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DENISE ORR
Claimant

APPEAL 22A-UI-05730-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROSSMARK INC
Employer

**OC: 03/14/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5 (2) a – Discharge for Misconduct
Iowa Code § 96.4(3) – Able & Available

STATEMENT OF THE CASE:

On March 4, 2022, Denise Orr (claimant/appellant) filed an appeal from the February 23, 2022, reference 03, unemployment insurance decision that concluded that the claimant voluntarily quit her employment on January 7, 2022, for personal reasons. A telephone hearing was held at on April 25, 2022 pursuant to due notice. The claimant, Denise Orr, participated and testified. The employer Cross Mark Inc., participated through Teresa Hicks, Human Resources Manager. Employer's Exhibit 1 and 2 were admitted. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant quit the employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 6, 2009. Claimant last worked as a part-time product demonstrator. Claimant was separated from employment on January 7, 2022, when she voluntarily quit her employment due to her unwillingness to work in a different store location. The claimant was banned from working at the Sam's Club store where she routinely worked after a verbal altercation with a Sam's Club Team Lead and a Manager. The claimant accidentally knocked some boxes over with her demo cart and when asked to help pick them up she told the team-lead to "fuck off". The claimant acknowledged under oath that she used those words but justified her response based on her belief that this individual was being rude to her. The Sam's Club store manager determined that due to the claimant's use of profanity and overall behavior she could no longer work at that location. The employer offered the claimant the same work at a different locations but the claimant did not want to work anywhere else and voluntarily quit her employment on January 7, 2022.

The claimant's behavior during the hearing imputed considerable strain on her credibility. She continually interrupted the employer's witness, interjected inappropriate comments when she

heard information she didn't agree with, and was unwilling to change her behavior after repeated warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the 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 provides, in pertinent part:

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:

(6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

The claimant's behavior and actions were the reason she was banned from working at the Sam's Club store where she normally worked. The employer provided her with work at other locations but the claimant was unwilling to accept those assignments. The claimant's offer of employment did not guarantee her work at one specific location and her subsequent refusal to work at a different location was her decision. (Employer's Exhibit 1). The circumstances that surrounded her inability to continue working at the location where she normally worked was attributable to her own bad behavior and her subsequent refusal to work at another location was also her decision. The claimant voluntarily quit her employment for reasons that were not attributable to her employer and benefits are denied.

Additionally the administrative law judge took the claimant's testimony regarding the claimant's ability to work and availability for work and finds that the claimant is not able to or available for work due to her medical conditions effective January 7, 2022.

Iowa Code § 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. 871-24.22(1) provides:

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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

Iowa Admin. Code r. 871-24.22(2) provides, in relevant part:

Benefit 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.

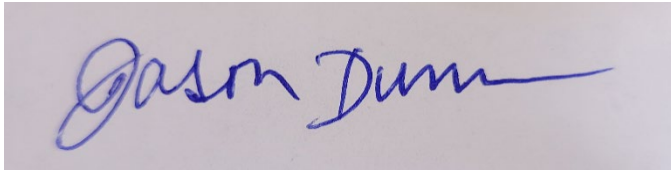
(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, 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.

The claimant testified that she has a myriad of health issues that make finding employment and working varying hours difficult. The claimant stated she was unable to drive to different store locations due to a Traumatic Brain Injury and that she could only work for a few hours each day. Currently the claimant works one day per week for a few hours doing demo work for a local grocery store. Based on the claimant's testimony regarding her health issues she is either unable to or unwilling to work unless it is her same field and she controls the location and the number of hours worked. The claimant is not able to and available for work effective January 7, 2022.

DECISION:

The February 23, 2022, (reference 03) unemployment insurance decision is affirmed. Claimant voluntarily left the employment 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. Further, the claimant is deemed not able to and available for work effective January 7, 2022, based on her medical issues.



Jason Dunn
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

May 9, 2022
Decision Dated and Mailed

jd/scn