

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY L VANCE
Claimant

APPEAL NO. 11A-UI-03112-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AT&T MOBILITY SERVICES LLC
Employer

**OC: 01/16/11
Claimant: Appellant (3)**

Section 96.5-2-a – Discharge
Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 2, 2011, reference 01, which denied unemployment insurance benefits finding the claimant voluntarily quit work on November 26, 2010 because of a non-work-related illness or injury. After due notice, a telephone hearing was held on April 4, 2011. Claimant participated personally. The employer participated by Ms. Lesley Buhler, Representative, and witness, Patricia Richey, Hiring Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits and whether the claimant is able and available for work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Ms. Wendy Vance was employed by AT&T Mobility Services, LLC from March 22, 2010 until February 17, 2011 when she was discharged from employment. Ms. Vance worked as a full-time customer service representative and was paid by the hour.

The claimant's last day of work was November 26, 2010. Claimant was unable to report for work due to a verified medical condition which required surgery. The claimant was discharged when she was unable to produce "medical records" required by the employer needed for the purposes of a medical leave of absence. The claimant had been informed that doctor's notes would not suffice but official medical records were required and the claimant was financially unable to provide the records that the employer required. When the claimant had no further time available to her under company policies, she was released from employment by AT&T Mobility Services, LLC.

REASONING AND CONCLUSIONS OF LAW:

This was not a case of the claimant failing to meet the employer's physical standards but a situation where Ms. Vance was unable to attend work due to a bona fide medical condition. The employer was aware of the condition and the claimant had supplied sufficient documentation to inform the company that the claimant was being absent through no fault of her own.

While the decision to terminate Ms. Vance may have been a sound decision from a management viewpoint, her separation did not take place due to intentional, disqualifying misconduct.

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".

In order to be eligible to receive unemployment insurance benefits an individual must not only claim benefits and be unemployed but also must be able and available for immediate employment. As the evidence in the record clearly establishes Ms. Vance is not able to work, she is ineligible to receive unemployment insurance benefits until she has recuperated and been fully released by her physician and has provided that information to Iowa Workforce Development.

DECISION:

The representative's decision dated March 2, 2011, reference 01, is affirmed as modified. Claimant was discharged under non disqualifying conditions and is potentially eligible to receive unemployment insurance benefits as the evidence in the record establishes the claimant is not able to work, she is ineligible to receive benefits until she has recuperated and been fully released by her physician and provides that information to Iowa Workforce Development.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs