

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**SUE J KRUCKENBERG
1160 – 250TH ST
SHEFFIELD IA 50475**

**JASPERSEN INSURANCE &
REAL ESTATE
PO BOX 120
THORNTON IA 50479**

**JACKIE ARMSTRONG
ATTORNEY AT LAW
PO BOX 679
MASON CITY IA 50402-0679**

**Appeal Number: 04A-UI-03633-S2T
OC: 02/29/04 R: 02
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-d - Voluntary Quit for Medical Reasons

STATEMENT OF THE CASE:

Sue Kruckenberg (claimant) appealed a representative's March 23, 2004 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Jaspersen Insurance & Real Estate (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 26, 2004. The claimant was represented by Jackie Armstrong, Attorney at Law, and participated personally. The employer participated by Jane Christianson, Vice President, and Eugene Christianson, President. The claimant offered one exhibit, which was marked for identification as Exhibit A. Exhibit A was received into evidence. The employer offered one exhibit, which was marked for identification as Exhibit One. Exhibit One was received into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 26, 2002, as a full-time customer service representative. The claimant suffered an injury, which was not caused by her employment. She had total knee replacement surgery on October 13, 2003. The claimant provided the employer with a physician's statement, which indicated that the claimant could not perform her work duties. The claimant notified the employer of her condition and the employer agreed to her absence from work.

On or about November 25, 2003, the claimant notified the employer that she was certified to return to work with restrictions by her physician. The employer told the claimant that her regular work full-time work in Belmond, Iowa was not available. The employer offered the claimant work in Thornton, Iowa, for \$0.10 more per hour. The employer offered the claimant 18 hours of work per week. The claimant refused the offer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did not.

Iowa Code Section 96.5-1-d 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. 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).

The claimant left work due to an injury under the advice of her physician. The employer consented to her leaving. The claimant has provided the employer with certification that she

has recovered with restriction. The claimant offered her services to the employer. The employer did not have regular or comparable suitable work available. The employer reduced the claimant's hours from 40 hours to 18 hours per week and changed the claimant's physical work location to another town. The employer has failed to meet the requirements of the statute and, therefore, the claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's March 23, 2004 decision (reference 01) is reversed. The employer has failed to meet the requirements of the statute and, therefore, the claimant is eligible to receive unemployment insurance benefits.

bas/b