

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE L SMITH
Claimant

APPEAL NO. 12A-UI-02821-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 02/05/12
Claimant: Respondent (1)

Section 96.5-1-d – Off to Return/No Work Available

STATEMENT OF THE CASE:

Employer filed a timely appeal from the representative's decision dated March 12, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on April 5, 2012. Claimant participated. Employer participated by Joani Lohman, Store Manager.

ISSUE:

The issue is whether the claimant was separated under disqualifying conditions.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Jamie Smith was employed by Casey's Marketing Company beginning September 2010. Ms. Smith worked as a full-time cook and was paid by the hour. Her immediate supervisor was Joani Lohman, Store Manager. The claimant last worked on December 8, 2011. She was unable to work the following day due to emergency surgery. The claimant was off work for an extended period of time with the approval of her doctor and the employer was aware of the claimant's inability to report for work for medical reasons.

The claimant was initially released to return to work on December 25, 2011 but was unable to return because of additional complications with her surgery. The claimant informed the employer and provided medical documentation. When the claimant was released to return to work and able to do so on January 31, 2012 the employer informed Ms. Smith that no work was available.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left for medical reasons and that no work was available to her at the time that she attempted to return. It does.

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.

The evidence in the record establishes the claimant last worked on December 8, 2011. The claimant left employment due to a verifiable medical condition. When the claimant was released to return to work on January 31, 2012, the employer did not allow her to return as no work was available to her. The employer cited the claimant's failure to request Family Medical Act as the reason for not allowing the claimant to return.

The evidence in this matter is disputed. The administrative law judge, having considered the evidence in the record, finds the evidence establishes the claimant left due to illness and was not allowed to return after recovering. Benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated March 12, 2012, reference 01, is affirmed. Claimant was separated for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs