

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JESSICA L CLOKE**  
Claimant

**RIVIERA WALKER INC**  
Employer

**APPEAL 15A-UI-03672-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/15/15**  
**Claimant: Appellant (1)**

Iowa Code §96.5(1)d – Voluntary Leaving/Illness or Injury  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 19, 2015 (reference 01) unemployment insurance decision that denied benefits based upon the claimant's separation. The parties were properly notified about the hearing. A telephone hearing was held on April 21, 2015. The claimant participated. The employer participated through Dennis Elmore. Claimant's Exhibits One and Two were admitted into evidence.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part time as a cashier and was separated from employment on February 21, 2015 when she voluntarily resigned. Continuing work was available.

The claimant is under medical care and treatment for bipolar and depressive disorder. This treatment began before employment with Riviera Walker, Inc. The claimant suffered a particularly bad episode around February 13 or 14, 2015 and on February 21, 2015. The claimant's doctor advised her not to perform any work or go to school (Claimant's Exhibit One). The claimant's medical condition was not a work-related illness or injury. The claimant quit as a result. The employer will allow the claimant to return to work but the claimant has elected to search for new employment because she did not get along with a co-worker.

The claimant's physician provided a release dated March 17, 2015 with the restriction that the claimant be only permitted to work four hours per week (Claimant's Exhibit Two). At the current time of the hearing, the restriction had not been lifted.

## 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 § 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 Code § 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.

Iowa Admin. Code r. 871-24.25(6) provides:

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 § 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 § 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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

In this case, the claimant initiated separation, when she voluntarily resigned on February 21, 2015. The claimant resigned to address treatment for a personal, non-work-related illness. She has since been released by her doctor to perform work, provided it is not more than four hours per week. The employer would permit the claimant to return to work but she has elected to seek employment elsewhere because of a co-worker she did not want to have to work with again.

The claimant's decision to quit to seek medical care for a non-work related illness and to not return to work because she did not like a co-worker may have been based upon good personal reasons, it was not for good cause reasons attributable to the employer according to Iowa law. Benefits are denied.

The next issue to be determined is whether the claimant is able to and available for work.

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. 871-24.23(3) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code § 96.4(3).

Because the claimant is medically limited to working four hours per week she cannot be considered able and available for work.

**DECISION:**

The March 19, 2015 (reference 01) unemployment insurance decision is affirmed. The 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. Effective March 17, 2015, the claimant is not able to and available for work.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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