

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BONNIE J LAUCLAN**  
Claimant

**APPEAL NO. 13A-UI-07802-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WOMENS SPECIALTY CARE**  
Employer

**OC: 05/19/13**  
**Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 25, 2013, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on October 9, 2013. Claimant Bonnie Lauchlan participated. Claudia Guardado represented the employer. Exhibits One through Five were received into evidence.

This matter was originally scheduled for August 8, 2013, but was postponed to September 11, 2013 due to that administrative law judge being ill. On August 14, 2013, the claimant requested a further reschedule of the hearing and indicated she was unavailable for a hearing from September 6, 2013 through September 16, 2013, due to her daughter having surgery on September 6, 2013. The matter was then set for October 9, 2013.

**ISSUE:**

Whether Ms. Lauchlan separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a medical clinic. Bonnie Lauchlan was employed by Women's Specialty Clinic as a full-time licensed practical nurse from July 2012 and last performed work for the employer on April 17, 2013. Ms. Lauchlan's immediate supervisor was Angel Chadwick, Office Manager. Ms. Lauchlan's duties involved assisting the doctor with procedures and otherwise assisting as needed in the clinic. Ms. Lauchlan suffers from rheumatoid arthritis.

In April 2013, Ms. Lauchlan and her doctor decided that she should not work for a period of four months. On April 22, 2013, Ms. Lauchlan submitted an application to the employer for leave under the Family and Medical Leave Act. Ms. Lauchlan did not meet the eligibility requirements for FMLA leave because she had not worked for the employer for a year and had not performed 1,250 hours of work for the employer. Ms. Lauchlan wanted the employer to approve a four-month absence, from April 18, 2013 to August 13, 2013.

On April 24, 2013, Rachel Spencer, Director of Human Resources sent Ms. Lauchlan a letter in which the employer declined to authorize the leave of absence and notified Ms. Lauchlan that the employer expected her to return to the employment with a full release no later than May 1, 2013. Earlier that day, Ms. Spencer had spoken with Ms. Lauchlan by telephone. Ms. Lauchlan asked whether Ms. Spencer was firing her. Ms. Spencer responded that Ms. Lauchlan would need to make the decision that was right for her when she received the letter denying her request for a four-month leave. Ms. Lauchlan did not return to the employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

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.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record indicates that Ms. Lauchlan voluntarily quit the employment by failing to appear for work after April 17, 2013 and by giving notice to the employer that she would not be available for work for four months. Ms. Lauchlan quit upon the advice of her physician due to a non-work-related illness. Ms. Lauchlan has not returned to the employer to offer her services after recovering from the illness. Ms. Lauchlan has not presented the employer, or Workforce Development, with proof that she has indeed recovered from the illness that took her off work in April 2013. The employer has not denied Ms. Lauchlan re-employment. The voluntary quit was without good cause attributable to the employer. Because the voluntary quit was without good cause attributable to the employer, Ms. Lauchlan is disqualified for unemployment insurance benefits.

Ms. Lauchlan can requalify for benefits through one of two means. The first means by which Ms. Lauchlan can requalify for benefits is by working in and being paid wages for insured work equal to ten times her weekly benefit amount. Ms. Lauchlan would have to meet all other eligibility requirements. The second means by which Ms. Lauchlan can requalify for benefits is to return to the employer after recovering from the illness, present proof of recovery, and offer her services. If at that point, the employer declines to re-employ Ms. Lauchlan, the separation will be for good cause attributable to the employer. Ms. Lauchlan would have to meet all other eligibility requirements.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a

continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The agency representative's June 25, 2013, reference 03, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The second means by which the claimant can requalify for benefits is to return to the employer after recovering from the illness, present proof of recovery, and offer her services. If at that point, the employer declines to re-employ the claimant, the separation will be for good cause attributable to the employer. The claimant would have to meet all other eligibility requirements.

This matter is remanded to the Claims Division for adjudication of the overpayment issue and for determination of whether the claimant has been able to work and available for work since she established her claim for benefits.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/css