

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN HOMANN

Claimant

APPEAL NO: 07A-UI-06173-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILLIAM COZART DDS

Employer

**OC: 11/19/06 R: 03
Claimant: Appellant (4)**

Section 96.4-3 - Able and Available for Work
Section 96.5-1-a - Voluntary Leaving - Other Employment
871 IAC 24.28(5) - Voluntary Quit Requalifications

STATEMENT OF THE CASE:

Karen Homann (claimant) appealed an unemployment insurance decision dated June 12, 2007, reference 02, which held that she was not eligible for unemployment insurance benefits because she was not available to work the hours required in her occupation with William Cozart, D.D.S. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 2, 2007. The claimant participated in the hearing. The employer participated through owner William Cozart and Geraldine Brouwer, Office Manager. There has been a separation from employment since this appeal was filed and both parties waived formal notice so that the separation issues could be addressed in this hearing. These issues are whether the claimant was discharged for misconduct and whether she voluntarily left for good cause attributable to the employer. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant limited her availability to work for the employer and whether her subsequent voluntary separation qualifies her to receive unemployment insurance benefits.

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 7, 2004 as a part-time dental assistant but became full-time by the second week. She continued on a full-time basis until September 11, 2006 when she requested to go part-time. Work was available but the claimant chose not to work on Mondays or Tuesdays. The employer's Waterloo office was hit by a motor vehicle in January 2007 so it was shut down for three to four months. The employer moved one day of work from Waterloo to its Denver office but did not have its employees work on Thursdays and Fridays. However, the employer paid its employees for those days so the claimant's wages were not affected by the office closure. She never requested additional hours even though additional work was available.

The claimant voluntarily quit on June 26, 2007 and retrieved her check and dental assistant license on June 27, 2007. She wanted more hours and at that point the employer had already made other arrangements. The claimant wanted to give the employer two weeks' notice but the employer advised her it was not necessary. She quit for other employment with the Isle of Capri and she will begin work there on July 9, 2007.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be determined is whether the claimant limited her availability to work.

Iowa Code section 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".

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant worked as a full-time dental assistant until September 11, 2006 when she voluntarily elected to go part-time. She chose not to work on Mondays or Tuesdays even though work was available. The claimant does not meet the availability requirements of the law and benefits are denied from December 30, 2006 through week-ending June 30, 2007.

The next issue to be determined is whether the claimant's separation from employment qualify her to receive unemployment insurance benefits. For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment to accept employment elsewhere.

Iowa Code section 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed as of July 1, 2007 and the employer's account shall not be charged.

DECISION:

The unemployment insurance decision dated June 12, 2007, reference 02, is modified in favor of the appellant. The claimant was not available to work from December 30, 2006 through week-ending June 30, 2007 and benefits are denied for that period. However, the claimant subsequently left her employment in order to accept other employment. Benefits are allowed as of week ending July 7, 2007, provided she is otherwise eligible. The employer's account shall not be charged.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs