

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAN BROWN**  
Claimant

**APPEAL NO: 12A-UI11318-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEVELOPMENTAL SERVICES OF IOWA**  
Employer

**OC: 08/19/12**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-1-d - Voluntary Leaving/Illness or Injury  
871 IAC 24.25(35) - Separation Due to Illness or Injury

**STATEMENT OF THE CASE:**

Jan Brown (claimant) appealed an unemployment insurance decision dated September 11, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Developmental Services of Iowa (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 16, 2012. The claimant participated in the hearing. The employer participated through Jennifer Bogacz, human resources and Bobbie Boze, supervisor. 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's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time direct support professional on October 24, 2011. She was assaulted by a client on June 23, 2012 and a workers' compensation claim was filed. The claimant was treated and immediately released to return to work. The employer is unaware of any ongoing problems as a result of that injury.

The claimant had a heart attack on August 9, 2012 and it does not appear that she returned to work after that, although she does claim that her last day of work was August 12, 2012. Her last day of work was August 12, 2012 and after that she left a voice mail for Supervisor Bobbie Boze stating that she was not doing well and wanted Family Leave. The claimant told Ms. Boze to fill her shifts because she was not able to return to work and did not know when or if she was coming back to work. As a result of this voice mail, the employer sent out leave paperwork.

On August 20, 2012, the claimant submitted medical leave paperwork due to a lung tumor, heart disease, inflammation, bronchitis, hard breathing, stress breathing, water collecting in the left foot and sinus heart failure. She confirmed the return to work date could not be determined. Human Resources Jennifer Bogacz called the claimant that day to advise her that an open-ended leave could not be granted and that she would have to reapply when she was able to return to work. Ms. Bogacz did not discharge the claimant and did not tell her she was fired.

It should be noted, the claimant testified that her heart attack was caused by work and that her physicians have stated the same. She admitted she is not medically able to work but has filed for weekly unemployment benefits each week since August 19, 2012. The administrative law judge questioned her as to how she could certify on her weekly claims that she was able and available to work when she was not. The claimant was asked whether she lied and she admitted that she had but said an Iowa Workforce representative told her to do so.

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

The issue to be determined is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code section 96.5-1. The claimant left her employment on August 9, 2012 due to a non-work-related medical condition and separated from her employer on August 20, 2012 for that same reason.

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.

871 IAC 24.25(35) 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 section 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 section 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant went on a medical leave of absence due to a non-work related illness. She would only be eligible for benefits if her position were not available to her after her recovery. A "recovery" under Iowa Code section 96.5-1-d means a complete recovery without restriction. White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992) (citing Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985)). The claimant has not been released to return to full work duties. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

**DECISION:**

The unemployment insurance decision dated September 11, 2012, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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