

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA CONNOLLY
Claimant

APPEAL NO: 08A-UI-11583-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLS & DALES CHILD DEV CENTER INC
Employer

OC: 11/09/08 R: 04
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:

Jessica Connolly (claimant) appealed an unemployment insurance decision dated December 9, 2008, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Hills & Dales Child Development Center, Inc. (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 December 23, 2008. The claimant participated in the hearing. The employer participated through Carol Boge, Human Resources Manager. Employer's Exhibit's One and Two were admitted into evidence. 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 considered all of the evidence in the record, finds that: The claimant was employed as a full-time personal assistant from November 16, 2006 through September 11, 2008 when she voluntarily resigned. She was suffering from a non-work-related medical condition and was unable to work as of February 27, 2008 pursuant to medical advice from her treating physician. She was released to light duty in August 2008 and then released with a 25-pound lifting restriction on approximately September 11, 2008. Her job requires that she be able to lift 50 pounds. The claimant was on an extended medical leave through October 18, 2008 but she submitted her written resignation on September 11, 2008.

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 §§ 96.5-1. The claimant left her employment on February 27, 2008 due to a non-work related medical condition.

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.

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 § 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:

(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 was released to return to work with restrictions which prevented her from carrying out the essential functions of her position. She resigned on September 11, 2008 and would only be eligible for benefits if her position were not available to her after her recovery. A "recovery" under Iowa Code § 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 December 9, 2008, 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs