

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICKI STANGL**  
Claimant

**APPEAL NO: 08A-UI-05983-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COLONIAL MANOR OF MANILLA INC**  
Employer

**OC: 06-01-08 R: 01**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 24, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 22, 2008. The claimant participated in the hearing. Carol Dammann, DON; Dixie Christianson, Administrator; and Linda Sauvago, Office Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left her position due to a non-work-related injury or illness.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time day charge nurse for Manilla Manor from February 22, 1999 to June 2, 2008. She was injured in a fall at home and was placed on restrictions by her treating physician March 10, 2008. She reported for work March 11, 2008, but was sent home by the employer because she was unable to perform all essential functions of her job. She applied for and was granted FMLA. On April 22, 2008, she returned to her doctor and the restrictions were changed but remained in effect. She left the release with restrictions in the employer's mailbox April 23, 2008, and went to work April 24, 2008, when she was again sent home by the employer because she did not have a full release. The employer encouraged her to apply for FMLA again but the claimant did not wish to do so. The claimant used her sick leave, vacation hours and one personal day by May 20, 2008, and received her last paycheck May 30, 2008. She resigned effective June 2, 2008, to seek other employment. The claimant has not yet received a full medical release from the treating physician.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is temporarily separated from her employment without good cause attributable to the employer.

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 has not been released to return to full work duties and the employer is not obligated to accommodate a non-work-related medical condition. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

**DECISION:**

The June 24, 2008, reference 01, decision is affirmed. The claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible or until such time as the claimant obtains a full release without restriction to return to regular duties, offers services to the employer, and the employer has no comparable, suitable work available.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs