

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER D KILGORE
Claimant

APPEAL NO: 18A-UI-11777-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCI HOTELS LLC
Employer

OC: 11/11/18
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Amber D. Kilgore, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated November 30, 2018, (reference 01) which denied unemployment insurance benefits, finding that the claimant voluntarily quit work on November 5, 2018 for personal reasons. After due notice was provided, a telephone hearing was held on January 3, 2019. Claimant participated. Employer participated by Ms. Mellissa Ziwicki, hearing Representative, and witness Ms. Ashley Bitt, General Manager.

ISSUE:

The issue is whether the claimant left employment with good cause that was attributable to the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Amber Kilgore was employed by SCI Hotels, LLC from April 6, 2018 until November 5, 2018, when she left employment for elective surgery. Ms. Kilgore was employed as the hotel's full-time executive house keeper and was paid by the hour. Her immediate supervisor was Ashley Bitt, the facility general manager.

Ms. Kilgore left her employment with the captioned employer dba Country Inns and Suites because she had chosen to have elective surgery at that time and needed approximately six to eight weeks for recovery.

Ms. Kilgore requested a medical leave of absence from the company for elective follow-up surgery. Ms. Kilgore had told the general manager that she needed to be off for the surgery and to recuperate. The employer was willing to allow Ms. Kilgore a medical leave of absence, but could not do so until the month of March, when the general manager believed that the facility would be better staffed during the claimant's absence.

Ms. Bitt, the general manager, asked the claimant to check with her doctor to determine whether Ms. Kilgore could have the surgery in March, 2019. Ms. Kilgore complied and was told by her physician that surgery could be accomplished at that time.

Ms. Kilgore elected not to wait until March, 2019 for the surgery, although she was aware the employer would approve a medical leave of absence at that time. Ms. Kilgore wanted the surgery to be accomplished as soon as possible and Ms. Kilgore felt that she could potentially hire sufficient housekeeping staff by November 5, 2018. Ms. Kilgore hoped that the employer would change its mind and approve her leave of absence for the earlier surgery. Because staffing levels had not been met, the employer was unwilling to grant the claimant a leave of absence until March, 2019. Ms. Kilgore elected to quit her job and have the surgery on the earlier date.

Ms. Kilgore has been fully released by her physician to return to full employment effective December 19, 2018.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause that was attributable to the employer. It does not.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

In the case at hand, Ms. Kilgore left her employment with this employer because she chose to have elective surgery at a time when the employer was unwilling to grant her a leave of absence because of inadequate staffing. Ms. Kilgore was aware that the employer was willing to grant her a medical leave of absence for elective surgery if she chose to undergo the surgery in March, 2019. The employer had determined that they would have adequate staffing at that time and they would approve Ms. Kilgore's request for medical leave of absence.

Ms. Kilgore was not only aware that the employer would grant her medical leave of absence for the surgery, she was also aware that her physician was willing to perform the surgery at the later date. Although a reasonable alternative was available to Ms. Kilgore, she elected to quit her job in order to have the surgery at the earlier date. Ms. Kilgore had not been advised to quit her job by her physician and her physician had indicated that there would be no issue with waiting until the March, 2019 date for the elective surgery.

A reasonable alternative was available to Ms. Kilgore. The claimant's reason for leaving employment on November 5, 2018 was not attributable to the employer, but based upon the claimant's personal desire to have her elective surgery accomplished sooner rather than later.

Because the claimant left employment without good cause attributable to the employer, she is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

DECISION:

The representative's unemployment insurance decision dated November 30, 2018, reference 01 is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn