

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**SKYLAR K MEINERS**  
Claimant

**APPEAL 22A-UI-18682-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ENLIVANT AID ES LLC**  
Employer

**OC: 07/25/21  
Claimant: Appellant (4)**

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Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code §96.5(1)- Voluntary Quit  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

On November 7, 2022, the claimant/appellant filed an appeal from the October 28, 2022, (reference 03) unemployment insurance decision that denied benefits based on claimant voluntarily quitting for personal reasons on October 1, 2021. The parties were properly notified about the hearing. A telephone hearing was held on December 1, 2022. Claimant participated. Employer did not call in to participate. Administrative notice was taken of claimant's unemployment insurance benefits records.

**ISSUES:**

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in 2018. Claimant last worked as a full-time resident care helper. In April or May of 2021 claimant provided employer a doctor's note that put her on a weight restriction of 35 pounds due to her pregnancy. Claimant provided the note to the employer and asked for an accommodation. The employer was unable to accommodate claimant's request for an accommodation and was instructed her to request FMLA leave. In June 2021 claimant's employer notified her that she did not qualify for FMLA. The employer agreed that claimant could go on a leave of absence until claimant she returned from maternity leave. In October 2021 claimant received a letter informing her she was terminated. Claimant attempted to call the employer and the employer did not return her phone call.

On November 5, 2021, claimant had her child. Claimant was cleared to return to work six weeks after her child's birth. On or about December 17, 2021, claimant contacted employer and informed them she could return to work. Employer did not return her phone call.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant left employment with good cause attributable to the employer. Benefits are allowed effective December 17, 2021.

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.

Iowa Admin. Code r. 871-24.26(6)a provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The exception in section 96.5(1)(d) only applies when an employee is fully recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346 (Iowa 1992); *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n.*, 468 N.W.2d 223, 226 (Iowa 1991)(noting the full recovery standard of section 96.5(1)(d)).

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

In this case claimant was on a medical restriction from her doctor until six weeks after her pregnancy. Claimant was restricted from lifting 35 pounds. Claimant requested an accommodation and the employer was unable to accommodate her request. The employer originally consented to claimant's absence until she returned from maternity leave. In October 2021 employer sent her a letter informing her she was terminated. Claimant had her child on November 5, 2021. Claimant was released back to work without restriction six weeks after the child's birth on or about December 17, 2021. Claimant offered her services to the employer on December 17, 2021 and the employer did not call her back and accept her offer. As a result, claimant falls within the exception of Iowa Code § 96.5(1) and is allowed benefits effective December 17, 2021.

**DECISION:**

The October 28, 2022, (reference 03) unemployment insurance decision is MODIFIED in favor of appellant. Claimant is separated from the employment with good cause attributable to employer. Claimant is allowed benefits effective December 17, 2022.



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Carly Smith  
Administrative Law Judge

December 5, 2022  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.