

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LILLIAN R KOOL
Claimant

APPEAL NO. 06A-UI-09658-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUCHANAN, WILMA L
WILMA L BUCHANAN
Employer

OC: 08/13/06 R: 03
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 20, 2006, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 16, 2006. Claimant participated. Employer participated by Jennifer Breakenridge, Power of Attorney.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 1, 2006. Claimant was diagnosed with sleep apnea. Claimant cared for an elderly individual who required round the clock care. Claimant was forced to use oxygen at night. Claimant was ordered by her doctor to quit because the oxygen would prevent her from hearing her patient at night. Claimant was allowed to sleep at night but remain on call to assist her patient. Claimant quit because she could not safely perform her job. The sleep apnea is not work related.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of a non-work-related illness. Claimant quit because she did not believe she could safely perform the essential functions of the job. This is a personal reason for a quit. Claimant has not recovered to the point where she could report back to work and ask for further assignment. Benefits withheld.

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.

DECISION:

The decision of the representative dated September 20, 2006, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs