

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALESHA ALBERTSON

Claimant

APPEAL NO: 12A-UI-05246-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC

Employer

OC: 03/25/12

Claimant: Appellant (2)

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:

Alesha Albertson (claimant) appealed an unemployment insurance decision dated April 27, 2012, reference 06, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Schenker Logistics, 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 May 29, 2012. The claimant participated in the hearing. The employer participated through Janelle Johnston, Staffing & Benefits Coordinator. Employer's Exhibit One was 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 general laborer from October 31, 2011 through March 28, 2012. She was off work from February 7, 2012 through March 7, 2012 due to foot surgery, which was a non-work-related medical condition. The claimant did not qualify for leave under the Family Medical Leave Act (FMLA) but the employer gave her a 30-day leave of absence. She returned to work on March 9, 2012 but only worked 3.2 hours of her 12-hour shift due to foot pain. The claimant's doctor said she needed an additional two weeks and the employer granted her the time.

The claimant returned to work on March 27, 2012 and worked 6.75 hours but again had to leave due to foot pain. The employer received a fax from the Iowa Foot and Ankle Clinic on March 28, 2012 which restricted the claimant to working no more than a six or eight-hour shift but if that was not possible, she was unable to work for another two weeks. The employer could not

accommodate the claimant's light duty restrictions and could not offer her any more time off work since her leave had already been extended two weeks.

The employer has an attendance point system wherein employees are discharged if they accumulate ten attendance points. The claimant had nine attendance points and she was advised that she could "point out" in which case she would not be rehired or she could voluntarily quit and could be rehired if she was able to return to work with a full release within 90 days. She voluntarily quit on March 28, 2012. The claimant received a full release from her physician and called the employer on April 30, 2012 to offer her services. The human resources department let the claimant's manager know that she had been released to return to work and the manager spoke with the claimant. However, the manager told human resources that the claimant was not a good fit and he did not rehire her.

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 Sections 96.5-1. The claimant left her employment on March 28, 2012 due to a non-work related medical condition.

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 went on a medical leave of absence due to a non-work related illness. She would only be eligible for benefits if her position were not available to her after her recovery. A "recovery" under Iowa Code Section 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 received a full release to return to work and has offered her services to the employer. However, the employer has no work available for the claimant. Accordingly, the separation is with good cause attributable to the employer and benefits are allowed.

DECISION:

The unemployment insurance decision dated April 27, 2012, reference 06, is reversed. The claimant voluntarily quit her employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs