

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENISE L ALBEE**  
Claimant

**APPEAL NO. 07A-UI-06966-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RMG DIRECT INC**  
**HENRY M GREEN & ASSOCIATES INC**  
Employer

**OC: 06/17/07 R: 03**  
**Claimant: Appellant (1)**

Section 96.5-1-d – Voluntary Leaving/Illness or Injury  
871 IAC 24.25(35) – Separation Due to Illness or Injury  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Denise L. Albee (claimant) appealed a representative's July 11, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from RMG Direct, Inc./Henry M. Green & Associates, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 1, 2007. The claimant participated in the hearing. Dominc Colella appeared on the employer's behalf. During the hearing, Claimant's Exhibits A and B were entered 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.

**ISSUES:**

Did the claimant voluntarily quit for a good cause attributable to the employer? Is she eligible for benefits as being able and available for work?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 15, 2007. She worked full time on a Monday-through-Friday, 8:00 a.m.-to-4:30 p.m. schedule as a telephone sales representative in the employer's Independence, Iowa, telemarketing call center. Her last day of work was May 9, 2007. On that date she submitted a written notice of an intent to quit for personal reasons, specifically, mental health issues with which she was dealing.

The claimant had previously requested and would have preferred to have a leave of absence. However, the claimant had not worked for the employer long enough to qualify for FMLA (Family Medical Leave). She could not provide a definite length of time for which she would need a discretionary leave of absence, but it might be a month or more; the employer therefore declined to allow the claimant a discretionary leave of absence. Since she could not have a

leave of absence and she knew that she could not continue working at that time, the claimant offered her resignation with the hope she could be rehired upon treatment and recovery.

The claimant's medical practitioner verified that the claimant was unable to work for substantially the entire time between May 9 and June 14, during which time she received inpatient and outpatient treatment. After leaving inpatient treatment on June 14, the claimant recontacted the employer seeking reemployment on or about June 15. However, during that same week she applied for disability benefits under SSDI. As a result, she restricted her availability to part-time work so as not to earn excess wages that might jeopardize her eligibility under SSDI.

#### **REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit, she would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

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.

871 IAC 24.25(35), (36) 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 § 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 § 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.

(36) The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

871 IAC 24.26(6)b 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.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

While the claimant might have preferred a leave of absence to quitting, she was not eligible for a leave and the employer was not compelled to grant her a leave. A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). Here, while the claimant may have had no realistic choice but to end her employment, it was due to her situation and choices that the employment ended; the employer would have allowed her to remain employed if she had been able to continue in her employment. Therefore the separation is treated as a voluntary quit not attributable to the employer.

A “recovery” under Iowa Code § 96.5-1-d means a complete recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). The claimant is not available to return to full-time work duties. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

The next issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

A claimant who previously worked full time and then restricts her employment to part time for any reason, including avoiding earning excess wages as to disqualify them from disability benefits, is not able and available for work. 871 IAC 24.23(3), (22); See also, 871 IAC 24.22-2-a, f. The claimant has restricted her availability and so is not currently eligible for unemployment insurance benefits as being able and available for work.

**DECISION:**

The representative's July 11, 2007 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of May 9, 2007, benefits are withheld until such time as the claimant has fully recovered and sought to return to work without restriction or until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She is not currently able and available for work and is therefore currently not otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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