

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYLA MILLER
Claimant

APPEAL NO. 07A-UI-08810-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP INC
Employer

**OC: 08/05/07 R: 01
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Kayla Miller (claimant) appealed an unemployment insurance decision dated September 10, 2007, reference 05, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Dollar General (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 October 2, 2007. The claimant participated in the hearing with her mother, Dawn Kirkpatrick. The employer participated through Tammy Hamilton, Manager. 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 having considered all of the evidence in the record, finds that: The claimant was employed as a part-time sales associate from February 2, 2007 through June 2, 2007. She was unable to work due to her pregnancy, which is a non-work-related medical condition. The claimant was taken off work pursuant to medical advice from a treating physician. She was released to return to work on August 13, 2007 and returned to the employer with the medical release. The claimant offered her services to the employer but has not been rehired.

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 June 2, 2007 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 was released to return to work without restrictions on August 13, 2007. She provided that release to the employer and offered her services, but the employer has not provided her with work. Accordingly, the separation is with good cause attributable to the employer and benefits allowed.

DECISION:

The unemployment insurance decision dated September 10, 2007, reference 05, is reversed. The claimant voluntarily left work with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw