

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN M PIERCE
Claimant

APPEAL NO. 09A-UI-17252-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALGREEN CO
Employer

OC: 10-04-09
Claimant: Appellant (1)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 2, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 22, 2009. The claimant did participate along with her witnesses Joan Yeater and Roxanne Rundle. The employer did participate through Leo Fernandez, Store Manager.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer or was she discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a photo technician full time beginning March 11, 2008 through September 18, 2009 when she voluntarily quit her employment by failing to return to work.

The claimant missed work on August 25 because she was hospitalized for psychiatric care through August 27. While she was in the hospital her sister called the employer to notify them of her absence. The claimant called Mr. Fernandez on August 29 and said she would be ready to return to work on August 31. The claimant did not come to work on August 31 but spoke again to Mr. Fernandez and told him that she would return to work on September 6. She did not return to work on September 6. Mr. Fernandez sent her a letter on September 7 indicating that she needed to return to work by September 18 with a doctor's note excusing her from work for the time period she was off work. The doctor's note the claimant provided for the fact-finding interview only excused her from August 24 through August 27. Mr. Fernandez never told the claimant that if she was not at work on September 6 that she would be replaced as is evidenced by the letter he sent her on September 7. In the letter of September 7, Mr. Fernandez notified the claimant that she would need to apply for disability leave if she was not going to return to work by September 18 and that she would need to have her medical leave supported by a doctor's note that she needed to be off work. The claimant did not supply any doctor's note to Mr. Fernandez, the fact-finding interview or for the hearing that she was not able to work after

August 27. The claimant picked up the letter Mr. Fernandez sent her on September 23. She called Mr. Fernandez on September 23 and asked for a telephone number for the corporate office which he gave her.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without 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) 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.

The claimant was given multiple opportunities to return to work or to provide medical documentation from her treating physician that she was not able to return to work. She did not do so. The claimant has not established that the injury was work related, as is her burden. Thus, she must meet the requirements of the administrative regulation cited above. She did not

present evidence in writing to the employer that the physician suggested leaving the employment. No work restrictions were in force. The employer worked with the claimant by sending her letters which she would not pick up. The administrative law judge is not persuaded that the claimant was told she would be discharged if she did not return to work by September 6 in light of the letter sent to her on September 7. Additionally, the claimant has had numerous opportunities to present medical evidence but has not done so. Under these circumstances the administrative law judge concludes that the claimant voluntarily quit her job by failing to return to work by September 18. Benefits are denied.

DECISION:

The November 2, 2009, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css