

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DIANA ROOD
Claimant

DOLGENCORP LLC
Employer

APPEAL 20A-UI-08705-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 17, 2020 (reference 01) unemployment insurance decision that denied benefit. The parties were properly notified of the hearing. A telephone hearing was held on September 9, 2020, at 9:00 a.m. Claimant participated. Employer did not participate. Claimant's Exhibits A and B were admitted.

ISSUES:

Whether claimant's separation was a voluntary quit without good cause attributable to employer.
Whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time Sales Lead Associate from May 1, 2018 until her employment with Dolgencorp ended on December 1, 2019 when claimant resigned due to a non-work-related injury. (Exhibit A) There was continuing work available for claimant if she had not quit. Claimant's job was not in jeopardy. Claimant had surgery on February 4, 2020. Claimant has not been released to return to work as a result of her surgery and also her physician's concerns about Covid-19 and claimant's underlying medical condition. Claimant has not returned to work and offered to perform services for Dolgencorp.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit work without good cause attributable to employer. Benefits are denied.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

Iowa Admin. Code r. 871-24.25(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.

Claimant quit her job due to a non-work-related injury or illness and obtained the advice of a physician. However, claimant has not been released by her physician to return to work and has not returned to Dolgencorp and offered her services. Therefore, claimant has not met the

criteria for the exception to disqualification set forth in Iowa Code section 95.5(1)d. Claimant has not met her burden of proving she voluntarily quit her employment for good cause attributable to employer. Benefits are denied.

Because claimant is disqualified due to separation, the issue of whether claimant is able to and available for work is moot.

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The July 17, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit her employment without good cause attributable to employer. Benefits are denied 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. The issue of whether claimant is able to and available for work is moot.



Adrienne C. Williamson
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September 11, 2020
Decision Dated and Mailed

acw/sam