

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**DORISCENE STEELE  
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**HARSCO CORP  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166 0283**

**Appeal Number: 05A-UI-05585-H2T  
OC: 04-17-05 R: 02  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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:

The claimant filed a timely appeal from the May 20, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 14, 2005. The claimant did participate. The employer did participate through Chris Welch, Site Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an overhead crane operator full time beginning November 24, 1997 through October 19, 2004, when she voluntarily quit. The claimant was injured in a non work-related incident and was unable to work pursuant to medical advice from a treating physician.

She has not yet received a full medical release from the treating physician. The claimant never notified the employer during any period of her employment that she believed her back problems were related to any kind of work related injury. The claimant had been off work for knee and ankle, as well as back problems, on at least five occasions over the last three years. After being off work for those problems, the claimant was welcomed back to work by the employer after she recovered and received a work release from her physicians. The claimant had not made a workers compensation claim against the employer to date of hearing. The claimant has never alleged, until very recently, that any medical problem she had was related to any work she performed for the employer. The claimant is currently prohibited from any work that requires prolonged sitting or standing. The claimant voluntarily quit work before she obtained a work release that allowed her to return to work without restrictions.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit her employment without good cause attributable to the employer.

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 administrative law judge is not persuaded that the claimant's injuries, including her degenerative disc disease, knee and ankle problems, are the result of a work related injury. For the three years prior to her leaving work, the claimant had been off work for five extended time periods to receive medical treatment, including surgery. During none of that time did she claim her injury or injuries or problems were related to her work. She was receiving medical treatment during that time period and it is hard to fathom that her medical provider would not tell her that her work was causing her problems. At the time she quit her employment, the claimant had not been released to return to full work duty without restriction. She chose to quit her employment. The claimant is currently prohibited from prolonged sitting or standing. The claimant quit due to non work-related medical problems. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The May 20, 2005, reference 01, decision is affirmed. The claimant's separation was 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 or until such time as the claimant obtains a full release without restriction to return to regular duties, offers services to the employer, and the employer has no comparable, suitable work available.

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