

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALICIA L GARCIA
Claimant

THE BUFFALO II INC
Employer

APPEAL 21A-UI-00923-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On December 14, 2020, the claimant filed an appeal from the August 26, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily ended her employment. The parties were properly notified of the hearing. A telephonic hearing was held on February 12, 2021. The claimant, Alicia L. Garcia, participated. The employer, The Buffalo II, Inc., participated through Tim Sieg, General Manager. Claimant's Exhibit A and Employer's Exhibits 1 and 2 were received and admitted into the record without objection.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a prep cook, from November 2018 until May 2, 2020, when she quit. Claimant had been laid off beginning on March 13, 2020. She was called back to work and returned on May 1, 2020. That day, Claimant felt at risk of contracting COVID-19 in the workplace. While the employer was following the CDC's guidelines and Governor Reynolds' mandates for social distancing and occupancy, there was not yet a mask mandate in place. Claimant has an autoimmune disease, as do her children, and she was already at heightened risk of contracting the virus. Therefore, Claimant chose to separate herself from her employment. She indicated to her employer that she would return "once it's safe," if she still had a job there. (Exhibit 1) Continued work was available, had Claimant not chosen to quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left 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.

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:

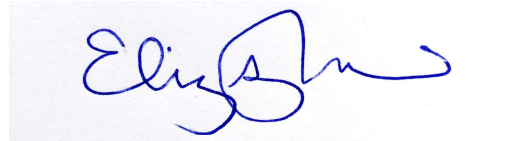
- a. Obtain the advice of a licensed and practicing physician;
- b. Obtain certification of release for work from a licensed and practicing physician;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- d. Fully recover so that the claimant could perform all of the duties of the job.

In this case, Claimant voluntarily separated herself from this employer because she was at heightened risk of contracting COVID-19, due to her underlying medical issues. She did not

obtain the advice of a physician prior to doing so, and therefore she cannot qualify for benefits under this subsection. Benefits are withheld.

DECISION:

The August 26, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

February 22, 2021
Decision Dated and Mailed

lj/kmj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**