

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE L BEESLEY
Claimant

OPTIMAE LIFESERVICES INC
Employer

APPEAL 22A-UI-11527-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/10/22
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit from Employment
Iowa Code § 96.5(1)D – Quit Due to Non-Work-Related Illness/Injury

STATEMENT OF THE CASE:

On May 5, 2022, claimant Michelle L. Beesley filed an appeal from the May 3, 2022 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant quit her employment due to a non-work-related illness or injury. The parties agreed to waive ten-day notice on the issue of whether claimant was discharged due to disqualifying misconduct or had quit without good cause attributable to the employer. A telephonic hearing was held at 11:00 a.m. on Friday, June 17, 2022. The claimant, Michelle L. Beesley, participated. The employer, Optimae Lifeservices, Inc., participated through DeeAnn Aguirre-Carrasco, Associate Regional Director for Optimae in Muscatine.

ISSUE:

Is the claimant qualified for benefits based upon her medically-related separation from the employment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Optimae Lifeservices, Inc. on June 25, 2018. She was employed full-time with the company, most recently as a direct support specialist and house lead. Claimant last reported to work and performed her job for an overnight shift beginning on February 19, 2022. Her employment ended on April 15, 2022, through a disqualifying medical-related separation.

After her shift on February 19, 2022, claimant took a leave from work to have surgery. She was released to return to work on April 5, 2022, with a permanent twenty-pound lifting restriction. This twenty-pound restriction also applied to pushing and pulling. Claimant's work as a direct support professional for the employer required her to frequently lift up to 25 pounds. She regularly lifted grocery bags, laundry baskets, and miscellaneous household items up to 25 pounds. Additionally, claimant's job description required her to be capable of lifting 25 pounds frequently and 40 pounds moderately.

When claimant presented her twenty-pound lifting restriction on April 5, the employer encouraged her to talk with her doctor and see if she could get the limit raised to 25 pounds. The employer wanted to retain her as an employee, but they needed claimant to be medically released to perform her job. Claimant could not obtain a doctor's release to lift up to 25 pounds on a frequent basis. The employer had no work available that claimant could safely perform given her restrictions. Therefore, after claimant was able to obtain alternate insurance, claimant separated from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation is 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 rule 871-24.25(35) provides:

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:

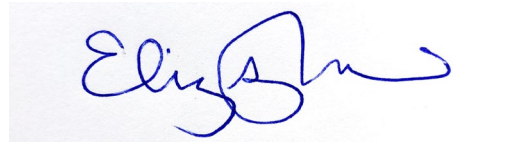
- a. Obtain the advice of a licensed and practicing physician;
- b. Obtain certification of release for work from a licensed and practicing physician;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

d. Fully recover so that the claimant could perform all of the duties of the job.

Here, the claimant left work in February 2022 for a medical reason unrelated to her employment. To date, claimant is not capable of performing the work of a direct support specialist, as she is unable to frequently lift, push, and pull 25 pounds. Her medical professional has specifically drafted her lifting restriction to be five pounds fewer than the employer's requirement, and testimony claimant offered during the hearing indicates that restriction will be permanent. As claimant has left her employment because of illness/medical reasons and has not met the requirements of section 96.5(1)d, her separation is classified as a voluntary quit without good cause attributable to the employer. Benefits must be withheld.

DECISION:

The May 3, 2022 (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

June 29, 2022
Decision Dated and Mailed

lj/lj

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov

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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.