

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREA MARTIN
Claimant

APPEAL NO. 10A-UI-00531-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

LONGBRANCH INC
Employer

**Original Claim: 11-29-09
Claimant: Respondent (2-R)**

Iowa Code 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 employer filed a timely appeal from the January 6, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 18, 2010. The claimant participated in the hearing. Doug DeLong, CFO, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her position due to a non-work-related injury or illness.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time server for Longbranch from March 28, 2009 to August 21, 2009. She was injured in a non-work-related car accident August 5, 2009, hurt her back and aggravated another pre-existing lower back condition. She worked with restrictions the employer was unaware of because it never received a fax from her physician from August 5 to August 18, 2009. Her restrictions, dated August 12, 2009, stated no lifting of more than five to ten pounds, “no bending, stooping or lifting until next appointment which will be determined after MRI.” On August 18, 2009, the claimant was excused from work until August 24, 2009. On September 1, 2009, she was excused from work until September 9, 2009. On November 30, 2009, she was released with restrictions stating she could work five hours a day, five days a week, with a 15-pound lifting restriction. Those restrictions were to remain in effect until December 18, 2009, at which time she received a full release to return to work. The claimant did not communicate with the employer after August 18, 2009, and the employer never received any information directly from her doctor. It was not aware of her status until she filed her claim for unemployment insurance benefits effective November 29, 2009. The employer testified it would be “glad to have her return” when she received a full release.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is separated from 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 claimant was released to return to full work duties December 18, 2009, but did not notify the employer of that fact and did not maintain contact with the employer throughout her absence. While she did have notes from her physician stating either she could not work or could work with restrictions, she did not provide those notes to the employer and the employer is not obligated

to accommodate a non-work-related medical condition even if she had provided her doctor's excuses. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The January 6, 2010, reference 01, decision is reversed. 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 takes a full release without restriction to return to regular duties to the employer, offers services to the employer, and the employer has no comparable, suitable work available. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw