

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DUONG T QUANG
Claimant

APPEAL 15A-UI-10009-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE BON-TON DEPARTMENT STORES INC
Employer

**OC: 08/02/15
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The employer filed an appeal from the August 25, 2015, (reference 05) unemployment insurance decision that allowed benefits based upon the determination she was discharged for absenteeism related to illness. The parties were properly notified about the hearing. A telephone hearing was held on September 21, 2015. Claimant Duong Quang did not participate. Employer The Bon-Ton Department Stores, Inc. participated through Human Resources Representative Amanda Vargason.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part time as a sales associate beginning June 30, 2015, and was separated from employment on July 30, 2015. The claimant's last day worked was July 22, 2015. On July 24, 2015, the claimant sent an email stating she needed a leave of absence until November 16, 2015 as she had given birth prematurely. The employer notified her two days later that the only leave it had available was a sixty-day leave which would not accommodate her request. She was told to reapply for her position when she was available for work and employment was ended on July 30, 2015. The claimant submitted an application on August 12, 2015 stating she would be available for work on October 1, 2015. The employer has attempted to contact the claimant every week since she filed a new application; however, its calls have not been returned.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 § 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 § 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 has not been released to return to full work duties and employer is not obligated to accommodate a non-work-related medical condition. If she has been released to work, she has not returned to the employer and offered her services. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The August 25, 2015 (reference 05) decision is reversed. The claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as 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 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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