

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PAULA J RUSSELL**  
Claimant

**REM IOWA COMMUNITY SERVICES INC**  
Employer

**APPEAL 19A-UI-05410-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/09/19**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On July 7, 2019, Paula J. Russell (claimant) filed an appeal from the July 3, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with REM Iowa Community Services, Inc. (employer) without good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on July 31, 2019. The claimant participated personally. The employer participated through Program Director Theresa Sanchez and was represented by Karen Stonebraker.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Program Supervisor beginning on October 2, 2018, and was separated from employment on June 2, 2019, when she quit. The claimant's primary job function was to supervise staff at the employer's facility which provided assisted living to persons with mental and physical impairments. She was responsible for creating a work schedule to ensure proper staff to resident ratio. The claimant often worked over 50 hours a week to ensure coverage for her house.

In March 2019, the claimant's doctor wrote a note stating the claimant could not work in excess of 50 hours a week. The claimant provided the note to her supervisor, Program Director Theresa Sanchez. Sanchez coached the claimant to flex her schedule if she knew she would have open shifts at the end of the week, she advised the claimant not to spend time with residents at the hospital when they were receiving medical care, and to stop answering phone calls from staff when she was not scheduled to be on-call. The claimant failed to follow Sanchez's suggestions and continued to work in excess of 50 hours a week.

On or about May 25, the claimant was diagnosed with cancer. She was told by her doctor that she needed to leave employment as they were going to take an aggressive approach to

treatment. The claimant notified the employer on or about May 28 that she was quitting employment as she had not worked there long enough to qualify for job protected leave under the Family Medical Leave Act (FMLA). She offered to return in a reduced role in August, once her treatment was over. Sanchez said she would get back to her, but did not reach out to the claimant after she left.

The claimant sought a second opinion after leaving employment and her treatment plan changed. She was released to return to work on July 3. The claimant did not reach out to the employer to seek employment after she was released to return to work.

### **REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

The claimant left work due to a non-work related illness. She left upon the advice of her treating physician and has been released to return to work. However, the claimant failed to return to the employer and offer services upon recovery from her illness. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

**DECISION:**

The July 3, 2019, reference 01, unemployment insurance decision is affirmed. 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.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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