

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE OSBORN
Claimant

APPEAL NO: 08A-UCFE-00022-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US DEPT OF AGRICULTURE
Employer

**OC: 07/20/08 R: 01
Claimant: Appellant (4)**

Section 96.5-1-c – Voluntary Leaving/Care of Ill or Injured Family Member

STATEMENT OF THE CASE:

Michelle Osborn (claimant) appealed a representative's August 21, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from the United States Department of Agriculture (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 9, 2008. The claimant participated in the hearing. Chris Knudsen appeared on the employer's behalf and presented testimony from one other witness, Tricia Mootz. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on November 16, 2003. She worked full time as a soil conservation technician in the employer's Primghar, Iowa field office. Her last day of work was January 4, 2008. By a resignation notice submitted on December 18, 2007, she quit effective January 4 to care for her then 14-month-old daughter.

The claimant's daughter had been suffering from a respiratory virus periodically for approximately six months. Her doctor indicated that the baby was having continued problems due to being continually exposed while in daycare, and the doctor recommended that the child be removed from daycare and cared for at home. The claimant is a single parent and did not have any support system available to her that would allow her to leave her child at home while continuing to work. The claimant and her daughter had been living in Paulina, Iowa during the time the claimant worked in the employer's Primghar office. She determined to resign and move from Paulina to live with her parents in Treynor, Iowa, about three hours away, so that she could stay home and care for her daughter. She made the physical move on January 5 and January 6, 2008.

The claimant did provide medical care for her daughter through the administration of breathing treatments into approximately early February 2008. Since then her health-related care for her child has primarily been to provide emotional comfort. However, as of August 26, 2008 the doctor was still recommending that the claimant stay home with her daughter. The claimant has not sought to return to work with the employer.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Where the quit is for a family member's medical or health reasons, the quit is disqualifying at least until the family member has recovered and the claimant has sought to return to work but no work is available with the employer. Iowa Code § 96.5-1-c; 871 IAC 24.26(8).

871 IAC 24.25 provides that, 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 claimant did express her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2.

A voluntary quit can be for good cause attributable to the employer even if the employer is free from any negligence or wrongdoing. Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956); Shontz v. IESC, 248 N.W.2d 88 (Iowa 1976). The claimant's original quit was to provide care for an ill family member, which in some instances can be treated as attributable to the employer. However, in order to treat the quit as attributable to the employer, the claimant must also demonstrate that upon the family member's recovery she sought to return to work with the employer, but her prior regular job or a comparable job was not available to her. She has not satisfied this burden. It does not appear that the family member has been certified as "recovered" so as to no longer need the claimant's care, and she has not sought to return to work with the employer. Benefits are denied until or unless the claimant satisfies this requirement of the statute and rule.

DECISION:

The representative's August 21, 2008 decision (reference 01) is modified in favor of the claimant. The claimant voluntarily left her employment in order to care for an ill family member, but has not yet offered to return to work. As of January 4, 2008, benefits are withheld until such

time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, or until she has offered to return to work and no work was available, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs