

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACELYN A LAMERE**  
Claimant

**APPEAL NO. 12A-UI-01715-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 12-25-11**  
**Claimant: APPELLANT (1)**

Iowa Code § 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 claimant filed a timely appeal from the February 8, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 8, 2012. The claimant did participate. The employer did participate through Jack Studer, Administrator and Angie Campbell, Director of Nursing and was represented by David Williams of TALX UC Express.

**ISSUE:**

Did the claimant voluntarily quit her employment without 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 as an LPN full time beginning in September, 2008 through December 8, 2011 when she voluntarily quit without good cause attributable to the employer. The claimant had work restrictions due to her pregnancy that the employer would not or could not accommodate. The claimant applied for and received leave under the Family Medical Leave Act (FMLA) beginning in September, 2011. She knew her FMLA was to expire on December 7, 2011. She did not return to work on December 7 despite the fact that she had been cleared by her physician to return to work on that date. When the claimant realized that she had missed her return to work date she spoke to the employer on December 13 and learned that because she had not returned to work or even contacted the employer to ask for additional leave time her position had been replaced. The claimant failed to return to work when medically able to do so and when her leave of absence had expired.

**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.

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.

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 § 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.

Claimant was released to return to full work duties but chose not to return to work at the expiration of her leave. The employer was not obligated to accommodate a non-work-related medical condition. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

**DECISION:**

The February 8, 2012, (reference 01) decision is affirmed. 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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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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