

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARILYN C JENSEN**  
Claimant

**APPEAL NO: 10A-UI-05671-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 03/07/10**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(35) – Leave due to Pregnancy

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated April 9, 2010, reference 02, that held she voluntarily quit employment without good cause on March 4, 2010, and benefits are denied. A telephone hearing was scheduled and held on May 25, 2010. The claimant participated. Rose Niemeyer, D.O.N.; Pam Tallman, Administrator; and Lynn Corbeil, Representative, participated for the employer. Employer Exhibit 1 - 6 was received as evidence.

**ISSUE:**

Whether the claimant voluntarily quit with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began work as a full-time, third shift C.N.A. on September 30, 2008. Due to her pregnancy, the claimant requested and was granted full-time, second shift work with fewer hours on November 9 to be effective December 1, 2009. The claimant last worked for the employer on January 3, 2010. The claimant requested and was granted FMLA maternity leave to begin January 10.

The claimant's doctor released her to return to work without restriction on March 4 to be effective the following day. The claimant had a meeting with employer representatives on March 5, and the employer offered claimant the same job and hours she had been working before going on leave. The claimant rejected the employer offer, and countered with a proposal to work weekends. The employer rejected the claimant offer, because it does not have weekend-package work available. The employer offered the claimant continuing employment as a casual employee, on-call when needed, and the claimant accepted.

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

Iowa Code section 96.5-1 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.

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 administrative law judge concludes that the claimant voluntarily quit employment without good cause attributable to the employer on March 5, 2010.

The most recent employment agreement between the employer and claimant as of November 30, 2009 was for her to move from full-time third shift to full-time second shift with fewer hours effective December 1, 2009. The claimant worked this job through January 3 when she went on maternity leave beginning January 10, 2010. When the claimant's doctor released her to return to work on March 5, the claimant's decision to reject the employer offer to have her return to the same job she worked on January 3, is a voluntary quit without good cause attributable to the employer. While the claimant elected to maintain a casual employee relationship with her employer, her failure to return to her most recent job is considered a quit without good cause. The employer is under no obligation to provide the claimant a different job than the one she last worked on January 3.

## **DECISION:**

The department decision dated April 9, 2010, reference 02, is affirmed. The claimant voluntarily quit without good cause attributable to the employer on March 5, 2010. Benefits are denied until

the claimant has worked in and is paid wages for insured work, equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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