

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HUNTER W INGER
Claimant

APPEAL NO: 06A-UI-10682-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VON MAUR INC
Employer

**OC: 10-01-06 R: 03
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 2, 2006, reference 04, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 30, 2006. Claimant participated. Employer participated through Jan Rushford.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time stock housekeeping from June 9, 2006 until September 1, 2006 and her last day of work was June 17, 2006 when she took a non-work-related medical leave of absence. Rushford called her on August 23 and asked if she would be able to return to work after the leave expired on August 27. Claimant said she would not be able to return to work based on her health condition and the doctors told her it would be months. She was unable to report to a meeting to complete paperwork on August 25. On August 29 manager Sarah Whitlock called her and asked if she would send a letter of resignation rather than coming in again. Claimant agreed to do so but never sent one. She was not released to return to work until October 12.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the 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.

Since the condition was not work related, she must meet the requirements of the administrative regulation cited above. She quit on August 23, 2006 stating she would not be able to return from her leave of absence and did not ask for an extension of the leave period or present evidence in writing to the employer that the physician suggested leaving the employment. Benefits are denied.

DECISION:

The November 2, 2006, reference 04, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs