

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**AMBER M VANCIL
PO BOX 364
STRONGHURST IL 61480**

**GREAT RIVER MEDICAL CENTER
HUMAN RESOURCES DEPT
1221 S GEAR AVE
WEST BURLINGTON IA 52655-1679**

**Appeal Number: 05A-UI-03515-DT
OC: 03/06/05 R: 12
Claimant: Respondent (5)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Great River Medical Center (employer) appealed a representative's March 25, 2005 decision (reference 01) that concluded Amber M. Vancil (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 25, 2005. The claimant participated in the hearing. Rosie Lohmann appeared on the employer's behalf and presented testimony from one witness, Susan Fowler. 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 cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on April 23, 2003. She worked part-time (approximately 32 hours per week) as a certified nursing aide (CNA) in the employer's hospital. Her last day of work was December 5, 2004.

Beginning August 17, 2004, the claimant started a FMLA (Family Medical Leave) due to complications of a pregnancy. Her 12 weeks of FMLA expired on November 9, 2004. She then began an 8-week personal leave of absence; the paperwork she signed on November 3, 2004 indicated the personal leave of absence would begin November 10, 2004 and would end on January 4, 2005, with an expected return to work date of January 5, 2005. The claimant did work five days during her leave period, which might have extended her leave through January 12, 2005.

The claimant's baby was born on December 18, 2004. On January 5, 2005, Ms. Fowler, the claimant's acting supervisor, contacted her and indicated that she was supposed to be back to work that day. The claimant responded that she had not yet been released to return to work. Ms. Fowler indicated that she would talk with another supervisor and a decision would be made as to whether the claimant's leave would be further extended. On January 6, 2005, the employer informed the claimant that the leave would not be further extended and her position was considered terminated, but that she would be eligible for rehire into some other position in the hospital upon making a new application should a position be available.

The claimant was released to return to work by her doctor as of January 24, 2005. She has made application for other positions with the hospital but as of the date of the hearing had not been rehired into any of the positions.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code section 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 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

871 IAC 24.26(6)a provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. By not being able to return to work at the end of the scheduled leave of absence, the claimant is deemed to have voluntarily quit. However, because the claimant's quit was due to a medical reason and from which she was subsequently released and then has attempted to return to work with the employer, she has satisfied the criteria of the statute and rule. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's March 25, 2005 decision (reference 01) is modified with no effect on the parties. The claimant voluntarily left her employment without good cause attributable to the employer. However, as of January 24, 2005, she has been released and had attempted to return to work with the employer, but no work was available. Benefits are allowed, if the claimant is otherwise eligible.

ld/sc