

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAUNDREA K JACQUES
Claimant

RANDSTAD US LLC
Employer

APPEAL 17A-UI-07903-H2T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/16/17
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 an appeal from the August 2, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 22, 2017. Claimant participated. Employer participated through Dave Blake, Staffing Manager.

ISSUE:

Is the claimant temporarily separated from 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: Claimant was last assigned at Nationwide Insurance full-time as a senior licensing coordinator beginning in May 2, 2016 through July 17, 2017. The claimant stopped working on July 17 as she was hospitalized with pregnancy complications that day. The claimant gave birth to her baby on July 20, 2017 and has not yet been released by her doctor to return to work. Nationwide ended the claimant's assignment when she was hospitalized. The claimant is not yet physically able to return to work as her doctor has not released her. She does not plan on returning to Randstad to ask for another work assignment once her doctor releases her to return to work. Randstad still considers her an employee and when she is released to work by her doctor, if she contacts them she may be placed in another job assignment.

The issue as to whether the claimant is considered able to and available for work is addressed in 17A-UI-07904-H2T.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is temporarily separated from the employment without good cause attributable to employer.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25(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 court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Employment Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Subsection d of Iowa Code § 96.5(1) provides an exception where:

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.

The statute specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is *fully* recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346; *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n.*, 468 N.W.2d 223, 226 (Iowa 1991) (noting the full recovery standard of section 96.5(1)(d)). In the Gilmore case he was not fully recovered from his injury and was unable to show that he fell within the exception of section 96.5(1)(d). Therefore, because his injury was not connected to his employment and he had not fully recovered, he was considered to have voluntarily quit without good cause attributable to the employer and was not entitled to unemployment benefits. See *White*, 487 N.W.2d at 345; *Shontz*, 248 N.W.2d at 91.

The record reflects that claimant's medical condition, (her pregnancy) is not work-related and she has not been released by her treating physician to return to work without work restrictions. The employer is not obligated to accommodate a non-work related medical condition. Accordingly, although the separation was for good personal reasons, it was without good cause attributable to the employer and benefits must be denied.

Claimant did not present evidence in writing to employer that a physician suggested leaving the employment and no work restrictions were in force. Employer attempted to find the claimant other employment with the little information it did have but that was rejected without medical foundation. Benefits are denied.

DECISION:

The August 2, 2017, (reference 01) decision is affirmed. Claimant is temporarily separated from the employment without good cause attributable to employer. Benefits are withheld until such time as she works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible or until such time as she obtains a full release to return to regular duties without restriction, offers services to employer, and it has no comparable, suitable work available.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs