

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY A GRADY
Claimant

APPEAL NO. 12A-UI-09845-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

OC: 06/17/12
Claimant: Respondent (1)

Section 96.5-1-d - Voluntary Quit for Medical Reasons

STATEMENT OF THE CASE:

HCM (employer) appealed a representative's August 7, 2012 decision (reference 02) that concluded Kimberly Grady (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 28, 2012. The claimant participated personally. The employer participated by Cyndi Gentz, Administrator, and Deb Vegors, Business Office Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from November 2009 until she was laid off in January 2011. She was rehired on January 16, 2012, as a part-time kitchen aide but worked in whatever department the employer needed her. Her last day of work was March 13, 2012.

On March 14, 2012, the claimant fell at home and shattered three vertebrae. She gave her doctor's excuse to her supervisor. The note indicated the claimant could not work until she was released. Shortly after the accident the claimant talked to the administrator who told the claimant her job would be there for her. On June 4, 2012, the claimant was released to return to work without restrictions. She took the note to the employer on that day and asked for work. The business office manager told the claimant there were no openings at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code section 96.5-1-d means a complete recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to an injury under the advice of her physician. The employer consented to her leaving. The claimant has provided the employer with certification that she has recovered. In addition the claimant has offered her services to the employer. The claimant has met the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible. The employer could not remember the crucial facts.

DECISION:

The representative's August 7, 2012 decision (reference 02) is affirmed. The claimant voluntarily quit work with good cause attributable to the employer and is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css