

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**SHERISE R HENNING**

Claimant

**APPEAL NO: 19A-UI-02983-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GIT-N-GO CONVENIENCE STORES INC**

Employer

**OC: 03/10/19**

**Claimant: Appellant (1)**

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury  
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 1, 2019, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 29, 2019. The claimant participated personally. The employer participated through Lanette Butt, supervisor. Employer Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, 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 the employment with good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a cashier from June 5, 2018 until August 31, 2018 and was separated from employment on November 8, 2018.

The claimant has a history of back problems due to a car accident and fall on ice. On September 2, 2018, she went to the emergency room due to her back “flaring up” and presented the employer a doctor’s note which excused her from work until September 5, 2018 (Employer Exhibit 1). The note also said the claimant could return without restrictions. The claimant then visited her primary care doctor on September 5, 2018 who stated the claimant was released to return to work on September 7, 2018, with restrictions of no lifting, bending or carrying any weight for the next four weeks (Employer Exhibit 1). The claimant was unable to perform her job duties with the restrictions and the employer did not accommodate the restrictions for a non-work related injury. On September 13, 2018, the claimant saw her doctor again, who stated the claimant could return to work on September 27, 2018 and had no restrictions until she saw a back specialist (Employer Exhibit 1).

On October 16, 2018, the claimant visited a back specialist who stated the claimant was unable to return to work and provided no other information, in terms of an anticipated return to work date. The claimant provided the employer a copy of the note in the “overnight drop” box. She had no other contact with the employer until February 22, 2019, after she visited her doctor again, who stated the claimant could perform work with restrictions of not lifting anything over five pounds and having to sit during her shift (See fact-finding documents). By this time, the employer had initiated separation with the claimant after she had provided no update to the employer after submitting the October 16, 2018 doctor’s note. As of the date of the hearing, the claimant has not been released to return to work without restrictions.

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

For the reasons that follow, the administrative law judge concludes claimant’s separation from the employment was without good cause attributable to the employer.

Iowa Code section 96.5(1) 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.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). In this case, claimant resigned due to a non-work related medical condition. The credible evidence presented is the claimant discontinued updating the employer after providing the October 16, 2018 doctor’s note which said she could not return to work. While the claimant’s medical provider did not advise her to resign, it is clear she was unable to work due to her medical condition. The claimant has not fully recovered, as certified by her doctor.

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 Dept 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)).

Therefore, because the claimant's injury was not connected to her employment and she has not fully recovered, she was considered to have voluntarily quit without good cause attributable to the employer and was not entitled to unemployment benefits. Benefits are denied.

**DECISION:**

The April 1, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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