

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SHARON K HOUSE
Claimant

APPEAL NO. 18A-UI-06657-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHUGARS SUPER VALU
Employer

**OC: 05/20/18
Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Sharon House (claimant) appealed a representative's June 13, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Shugars Super Valu (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 3, 2018. The claimant participated personally and through her friend, Shelly Bolton. The employer participated by Jenny Welch, Store 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 was hired on January 27, 2017, as a full-time cashier. She had a history of walking off the job.

On May 8, 2018, the claimant worked for hours alongside supervisors and owners with no sign of any issues. At some point she went to the store manager's office and saw she was on the telephone. The store manager was on the telephone managing a truck delivery and held up one finger to indicate she was busy. Later, the claimant returned. The store manager was still on the telephone and pushed the door closed. The claimant did not indicate any sort of distress.

After some time, a supervisor told the store manager that the claimant left work. The store manager went into the parking lot and found the claimant. The claimant said she was in pain but was not going to a doctor because her insurance was red flagged. The store manager told her it was fine for her to be absent that day but she needed to get help. The store manager said, "I'm not firing you but I need to know about the rest of the week." The claimant said, "I'm

going to have to quit. I can't make it. I'm in so much pain." The claimant left work and never returned. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the 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.

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Services v. Jackson and Employment Appeal Board*, 810 N.W.2d 532 (Iowa Ct. App. 2012).

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 a medical condition without the advice of her physician. The employer consented to her leaving. The claimant has failed to provide the employer with certification that she has recovered. In addition, the claimant has failed to offer her services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's June 13, 2018, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs