

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHERRILL L GRESS**  
Claimant

**APPEAL NO. 07A-UI-11239-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 11/04/07 R: 04**  
**Claimant: Appellant (4)**

Section 96.5-1-d – Voluntary Leaving/Illness or Injury  
871 IAC 24.25(35) – Separation Due to Illness or Injury

**STATEMENT OF THE CASE:**

Sherrill L. Gress (claimant) appealed a representative's November 26, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 19, 2007. The claimant participated in the hearing. Tim Speir of Unemployment Insurance Services appeared on the employer's behalf and presented testimony from two witnesses, Brent Vogeles and Joe Bauer. 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 good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 1, 2007. She worked part time (nearly 40 hours per week) as a kitchen clerk at the employer's Davenport, Iowa store. She normally worked Thursday through Sunday, 6:00 a.m. to 4:00 p.m. Her last day of work was October 5, 2007. She was absent her next two workdays, October 6 and October 7; she called in more than two hours prior to her shifts on those days and reported her absences due to illness to an employer representative, but the messages were not conveyed to her kitchen manager, Mr. Vogeles. She was next scheduled to work on October 11 and October 12; she again called in more than two hours prior to her shifts on those days and reported her absences due to illness to an employer representative, but again the messages were not conveyed to Mr. Vogeles.

On October 13 and October 14, the claimant was a no-call, no-show for work. She was still ill, and had gone to stay with her daughter, who did not have phone service. The claimant was next scheduled to work on October 18, but on October 17 she was taken to the hospital by ambulance and then transferred to Iowa City. She was not conscious for approximately the first four days, and was not released from the hospital until October 27. She did not attempt to return to work with the employer after her release, as she had heard from another employee that she had lost her job. The employer had concluded the claimant had voluntarily quit by job abandonment under the employer's three-day no-call, no-show policy.

## REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). However, the intent to quit can be inferred in certain circumstances. For example, a three-day no-call, no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). Further, failing to return to work due to a belief the person has or will be discharged is a voluntary quit where the employer has not informed the employee that she has been discharged. 871 IAC 24.25(33). The claimant did demonstrate the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. A voluntary quit can be for good cause attributable to the employer even if the employer is free from any negligence or wrongdoing. Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956); Shontz v. IESC, 248 N.W.2d 88 (Iowa 1976). The claimant's original separation from the employer was for personal good medical cause that was not attributable to the employer. However, the law provides that the separation can be converted into one attributable to the employer if the claimant demonstrates that after her recovery she attempted to return to work with the employer, but no work was available.

Iowa Code § 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 24.25(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 § 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 § 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.

A "recovery" under Iowa Code § 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 has not demonstrated she has been released to return to full work duties or that she attempted to return to work with the employer but no work was provided.

The claimant has not satisfied her burden. Benefits are denied until or unless she satisfies this requirement of the statute and rule.

**DECISION:**

The representative's November 26, 2007 decision (reference 01) is modified in favor of the claimant. The claimant voluntarily left her employment for good personal medical reasons, but has not yet offered to return to work. As of October 18, 2007, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, or until she has offered to return to work and no work was available, provided she is then otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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