

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRACY L MILLER**  
Claimant

**APPEAL NO: 09A-UI-01969-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK SHOP INC**  
Employer

**OC: 01/04/09 R: 04  
Claimant: Appellant (1)**

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:**

Tracy L. Miller (claimant) appealed a representative's January 30, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Kwik Shop, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 2, 2009. The claimant participated in the hearing. Marty Young of TALX Employer Services appeared on the employer's behalf. 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 October 21, 2006. She worked part time (20 - 30 hours per week) as a clerk in the employer's Davenport, Iowa store. Her last day of work was December 10, 2008.

On December 8 the claimant fell while off duty and broke her foot. She proceeded to work on December 10, but then indicated to the store manager, Ms. McMorrان that she needed to be off work for at least a period of time. She had surgery on the foot on December 31. She then recontacted Ms. McMorrان and indicated that she needed to resign for the time being as she would not be able to return to work for at least two months. Ms. McMorrان agreed that the employer would try to rehire the claimant when she was released to return to work.

The claimant spoke to Ms. McMorrان in mid-February and advised her that she was still required to wear the "boot" cast and had not been released to return to work by her doctor. As of the date of the hearing the claimant still had not been released.

**REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit, she would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Where the quit is for medical or health reasons, the quit is disqualifying at least until the claimant has recovered and seeks to return to work unless the medical or health issue is attributable to the employer. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b.

Where a claimant has been compelled to leave employment upon the advise of her physician due to a medical or health issue not caused or aggravated by the work environment, the claimant is not eligible to receive unemployment insurance benefits until or unless the claimant then recovers, is released to return to work by her physician, and in fact does attempt to return to work with the employer. 871 IAC 24.25(35). 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 been released to return to full work duties, and so has not yet attempted to return to work with the employer. Unemployment insurance benefits are not intended to substitute for health or disability benefits to cover a period of unemployment caused by a non-work-related medical issue. White v. Employment Appeal Board, 487 N.W.2d 342 (Iowa 1992). Accordingly, the separation is without good cause attributable to the employer and benefits must be denied until or unless she is fully released and does attempt to return to work with the employer.

**DECISION:**

The representative’s January 30, 2009 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of December 10, 2008, 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, provided she is otherwise eligible, or until she has been released by her doctor and attempted to return to work but no work was available.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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