

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JENNIE M CHRISTIANSON
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**KOHL'S DEPARTMENT STORES INC
C/o JON-JAY ASSOCIATES INC
PO BOX 182523
COLUMBUS OH 43218-2523**

**Appeal Number: 05A-UI-11017-LT
OC: 12-05-05 R: 02
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code §96.5(1) – Voluntary Leaving
871 IAC 24.26(6) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the October 20, 2005, reference 06, decision that denied benefits. After due notice was issued, a hearing was held on November 10, 2005. Claimant did participate with Bradley Christianson. Employer did participate through Raye Moffett.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time beauty specialist supervisor through September 21, 2005 when she left the employment involuntarily. On June 16, 2005 her physician ordered her to work part time (no more than five hours per day) and her last day of work was July 11 after her physician ordered bed rest due to high blood pressure and anemia. She provided this medical information

to employer. Employer sent claimant a written statement in the mail that she must return by September 25 and she received the statement on September 19. The doctor released her to return to work on September 21, 2005 without restriction. She spoke to Jeff Leonard, manager, on September 21 and offered her services. He told her he gave her job away and there were no other openings in the store. Leonard remains store manager but did not participate.

Claimant had multiple options for child care from family and friends if she needed to arrange for permanent day care.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no work was available to the claimant upon her release to return to work from a non-work related injury.

Iowa Code section 96.5-1 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.

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.

871 IAC 24.26(6)b provides:

- (6) Separation because of illness, injury, or pregnancy.

- b. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The claimant's call to employer on September 21 to offer services after her release from maternity leave evinces an intention to continue working. Because Leonard told her he had given away her job and no other work was available, the separation was attributable to a lack of work by the employer. Benefits are allowed.

DECISION:

The October 20, 2005, reference 06, decision is reversed. Claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

dml/pjs