

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMY J MCKIM**

Claimant

**APPEAL NO. 07A-UI-02749-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**OC: 04/23/06 R: 03  
Claimant: Respondent (1)**

Section 96.5-1-d – Voluntary Leaving/Illness or Injury  
871 IAC 24.25(35) – Separation Due to Illness or Injury  
Section 96.7-2-a(2) – Charges Against Employer's Account

**STATEMENT OF THE CASE:**

Cargill Meat Solutions Corporation (employer) appealed a representative's March 8, 2007 decision (reference 05) that concluded Amy J. McKim (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 4, 2007. The claimant participated in the hearing. Katie Diercks 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.

**ISSUES:**

Did the claimant voluntarily quit for a good cause attributable to the employer? Is the employer's account subject to charge?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 27, 2006. She worked full time as a production worker on the cut floor of the employer's Ottumwa, Iowa, pork processing facility. She normally worked on the second shift from approximately 2:30 p.m. to 11:00 p.m., Monday through Friday. Her last day of work was January 12, 2007.

The claimant is pregnant, and in January and February was in her first trimester. She was experiencing some complications and was seeing her doctor virtually weekly. Each day from January 15 through February 5 the claimant called in sick because her doctor had advised her that she should not work at that time in order to avoid jeopardizing the pregnancy. She did not provide a doctor's excuse at that time, as she intended on bringing in her notes when she returned to work.

She ceased calling in beginning February 6. The reason she ceased calling in was that she had gone to see her doctor that day and had been told she should not go back to work with the employer at all, to protect her pregnancy. She therefore decided to quit. She did not notify the

employer of her intent, but realized that if she was a three-day no-call, no-show, she would be deemed to be a voluntary quit. She did not call in on February 6, February 7, February 8, and February 9. The employer did in fact consider her to have quit under its policy.

The claimant returned to her doctor during the day on February 12. Reversing the statement from the prior week, she was then told that she was released to return to work with the employer, even that day. She therefore went to the employer's facility on February 12 and sought to return to work, bringing with her doctor's excuses and her release to return to work on that date. The employer declined to allow her to return to work at that time.

The claimant established an unemployment insurance benefit year effective April 23, 2006. She filed an additional claim effective February 11, 2007.

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

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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 24.25(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 section 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 section 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.

While the claimant did not specifically notify the employer of her quit or the reason for the quit, she did in fact have the intention to quit and acted to carry out that intention. She would be ineligible for unemployment insurance benefits until such time as she recovered and sought to return to work. 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 was released to return to full work duties; she did seek to return to work with the employer, but her position was not available to her. Accordingly, the separation is with good cause attributable to the employer and benefits are allowed.

The final issue is whether the employer’s account is subject to charge. An employer’s account is only chargeable if the employer is a base period employer. Iowa Code §96.7. The base period is “the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual’s benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim.” Iowa Code §96.19-3. The claimant’s base period began January 1, 2005 and ended December 31, 2005. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

**DECISION:**

The representative’s March 8, 2007 decision (reference 05) is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, if the claimant is otherwise eligible. The employer’s account is not subject to charge in the current benefit year.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/kjw