

**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**

**HEATHER ALDRICH  
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**JOSEPH ERTL INC  
P O BOX 327  
DYERSVILLE IA 52040**

**Appeal Number: 04A-UI-03822-ET  
OC 11-02-03 R 04  
Claimant: Appellant (1)**

**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, 2<sup>nd</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Able and Available for Work  
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:

The claimant filed a timely appeal from the March 26, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 27, 2004. The claimant participated in the hearing. The employer was not available at the number provided at the time of the hearing and did not participate in the hearing.

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time machine operator for Joseph Ertl Inc. from December 1, 2003 to February 6, 2004. She was pregnant and under work restrictions pursuant to a medical specialist. The claimant quit without notice and moved approximately 90 miles away to be closer to where her medical specialist is located and to live with a family member. She has not yet received a full medical release from the treating physician.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is temporarily separated from her employment without 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.

The claimant left her employment without notice to move closer to her specialist and her family because of her pregnancy. The claimant has not been released to return to full work duties and is not currently able to work. 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). Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The March 26, 2004, reference 01, decision is affirmed. The claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as the claimant obtains a full release without restriction to return to regular duties, offers services to the employer, and the employer has no comparable, suitable work available.

je/s