

**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**

**PEGGY JOHNSON  
4218 SW 27<sup>TH</sup> ST  
DES MOINES IA 50321**

**QWEST CORPORATION  
c/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000**

**MICHAEL SELLERS  
ATTORNEY AT LAW  
ONE CORPORATE PL  
1501 – 42<sup>ND</sup> ST STE 380  
WEST DES MOINES IA 50266-1005**

**Appeal Number: 05A-UI-08307-B  
OC: 07/10/05 R: 02  
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, 4<sup>th</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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

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:

Peggy Johnson (claimant) appealed an unemployment insurance decision dated August 2, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Qwest Corporation (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa on September 1, 2005. The claimant participated in the hearing. The employer participated through Dean Reed, Telesales Manager. Claimant's Exhibits A, B, C, and D were admitted into evidence.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time customer service & sales consultant from December 2, 2002 through July 8, 2005. Pursuant to medical advice from her treating physician, the claimant went on a non-work-related medical leave of absence. She exhausted her leave under the Family Medical Leave Act as of June 3, 2005. She also received paid short-term disability benefits through June 26, 2005. The claimant was scheduled to return to work on June 27, 2005 but had not yet been released to return to work without restrictions. She did not return to work and did not contact her employer until June 8, 2005, when she voluntarily quit. The claimant was released without restrictions as of June 11, 2005 but has not returned to the employer to offer her services.

#### REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code sections 96.5-1. The claimant left her employment on July 8, 2005 due to a non-work-related medical condition.

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 went on a medical leave of absence due to a non-work related illness. She would only be eligible for benefits if her position were not available to her after her recovery. A "recovery" under Iowa Code section 96.5-1-d means a complete recovery without restriction. White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992) (citing Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985)). The claimant has been released without restrictions as of July 8, 2005 but has not returned to the employer to offer her services. Accordingly, her separation is considered to be a voluntary quit without good cause attributable to the employer and benefits must be denied.

DECISION:

The unemployment insurance decision dated August 2, 2005, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount provided she is otherwise eligible.

sdb/pjs