

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEFANIE L BUTLER
Claimant

APPEAL NO. 09A-UI-11314-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

Original Claim: 07/05/09

Claimant: Appellant (4)

Section 96.5-1 – Voluntary Leaving
871 IAC 24.22(2)j – Leave of Absence
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Stefanie L. Butler (claimant) appealed a representative's August 3, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from the University of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 24, 2009. The claimant participated in the hearing. Dave Bergeon appeared on the employer's behalf. During the hearing, Claimant's Exhibits A through C were entered into evidence. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 15, 2008. She worked full-time as a nursing assistant in the mother/baby unit of the employer's hospital, working an 11:00 p.m.-to-7:30 a.m. shift. Her last day of work was April 20, 2009.

The claimant was off work after April 20 due to depression, for which she had been diagnosed and was being treated. She was not eligible for FMLA (Family Medical Leave), as she had not worked with the employer long enough, although the employer granted her some informal medical leave of absence. Several dates were set for her return, initially May 4, then May 11, then May 31. The employer concurred with the claimant's requests to have the leave extended the first several times, until May 31.

The claimant's doctor had released her to return to work on May 31, 2009. On May 31, the claimant attempted to return to work but was unable to do so; she returned to her doctor the next day, who excused her from work on May 31 and made some further adjustments to her

medications. However, the employer declined to agree to any further extensions of the leave period. As a result, the claimant's employment ended. However, the claimant's supervisor did invite her to reapply for employment at such point as she was sufficiently recovered to return to work.

The claimant did reapply for employment with the employer on or about August 7, 2009, which is also when the claimant's doctor provided her with a new release to return to work. No action had been taken on that application as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if at the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits; and, conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed, the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

Here, the claimant failed to return at the end of the leave of absence, and is therefore deemed to have voluntarily quit the employment. The claimant therefore has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2.

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. Iowa Code § 96.5-1; 871 IAC 24.25(35). Where a claimant has been compelled to leave employment 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).

Here, the claimant was released to return to work, she did seek to return to work with the employer, but her position or a comparable position is apparently currently not available to her. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Even though the employer had a good business reason for proceeding to fill the claimant's position, as of August 9, the first benefit week the claimant made herself available to return to work, the separation is with good cause attributable to the employer and benefits are allowed. She is not eligible for the time prior to August 9.

DECISION:

The representative's August 3, 2009 decision (reference 01) is modified in favor of the claimant. The claimant voluntarily left her employment without good cause attributable to the employer due to a non-work-related medical issue as of May 31, 2009, but she has since been

re-released by her doctor and has reapplied for employment but reemployment was not provided for her. Therefore, as of August 9, 2009, the separation is treated as a voluntarily quit with good cause attributable to the employer. Benefits are allowed, if the claimant is otherwise eligible beginning August 9, 2009.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw