

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LYNDA MCDOWELL**  
Claimant

**APPEAL NO: 14A-UI-09196-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRESBYTERIAN HOME HOUSING**  
Employer

**OC: 07/27/14**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1)d – Temporary 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 August 26, 2014, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 26, 2014. The claimant participated in the hearing. The employer did not respond to the hearing notice by providing a phone number where it could be reached at the date and time of the hearing as evidenced by the absence of a name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice.

**ISSUE:** The issue is whether the claimant voluntarily left her position due to a non-work-related injury or illness.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time CNA for Presbyterian Homes Housing July 10, 2013, and continues to be employed in that capacity with the employer. She is pregnant and on June 22, 2014, she experienced pain in her side and back while at work and was forced to seek treatment in the emergency room that night. She had kidney stones and her doctor released her to return to work June 30, 2014, but imposed a 20-pound lifting restriction. An essential function of the claimant's job is that she be able to lift up to 50 pounds. The employer either did not have light-duty work for the claimant or was unwilling to accommodate her restrictions. She has not yet received a full medical release, without any restrictions, 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.

Iowa Admin. Code r. 871-24.25(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 has not been released to return to full work duties and the employer is not obligated to accommodate a non-work-related medical condition. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied. Once the claimant obtains a full medical release to return to work, she must return to the employer and offer her services. If the employer does not allow her to return to the same or comparable employment, she would generally be eligible for unemployment benefits at that time. If her employment is terminated by the employer at the conclusion of her leave of absence October 1, 2014, or any date afterward, the claimant should seek direction from her local Iowa Workforce office about obtaining unemployment benefits at that time.

#### **DECISION:**

The August 26, 2014, reference 02, decision is affirmed. The claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she

is otherwise eligible or 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 or until her employment is terminated.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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