

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA M CLIMER
Claimant

APPEAL NO. 09A-UI-16811-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS L CARDELLA & ASSOCIATES INC
Employer

**Original Claim: 04/26/09
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.22j(1),(2),(3) – Leave of Absence
871 IAC 24.25(17) – Child Care Problems

STATEMENT OF THE CASE:

The claimant appealed a department decision dated October 30, 2009, reference 01, that held she voluntarily quit without good cause attributable to her employer on August 7, 2009, and that denied benefits. A telephone hearing was held on December 14, 2009. The claimant participated. The employer did not participate.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time customer care agent from October 5, 2008 to September 29, 2009. The claimant last worked for the employer on July 24 due to pregnancy, and she went to the hospital on July 27 with complications.

The claimant requested maternity leave after her hospital visit upon her doctor's advice. The employer policy provides six weeks for usual maternity leave and eight weeks when a C-section is involved. The employer granted the claimant leave with a return to work date of September 28 by err, as it was one week more than allowed by policy.

The employer called claimant about her return to work for the September 28 and she agreed. The claimant's son became ill and daycare would not take him, so the claimant asked her employer for a one-day extension to September 29, and it was approved. The claimant's other children became ill, daycare would not take them, but she failed to call the employer about her return to work until October 5. The employer advised she was terminated for being a no-call/no-show to work after September 29.

The employer failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 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.

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

871 IAC 24.25(17) 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:

(17) The claimant left because of lack of child care.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to her employer due to leaving work on an approved maternity leave but failing to return to work due to child care problems without notice to the employer.

The employer granted the claimant a generous maternity leave period that it extended at the request of the claimant due to an ill child. The claimant failed to request any further extension

of the leave beyond September 29 and provided no notice that she had further child care issues before calling on October 5.

DECISION:

The department decision dated October 30, 2009, reference 01, is affirmed. The claimant voluntarily quit without good cause attributable to her employer effective September 29, 2009. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw