

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CARLA S TRUMBAUER**  
Claimant

**B R STORES INC**  
Employer

**APPEAL 21A-UI-17508-DH-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/06/21**  
**Claimant: Appellant (5)**

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Iowa Code § 96.5(1) - Voluntary Quit  
Iowa Code § 96.5(2)a - Discharge for Misconduct  
Iowa Admin. Code r. 871-24.22(2)j(2) - Leave of Absence - Voluntary Quit

**STATEMENT OF THE CASE:**

Claimant filed an appeal on August 9, 2021 from the August 3, 2021, (reference 01) unemployment insurance decision that denied benefits based upon claimant voluntarily quitting on November 6, 2020. The parties were properly notified of the hearing. A telephone hearing was held on September 30, 2021. The claimant, Carla Trumbauer, participated. The employer participated through Jon Thober and Brian Marohl. Employer's Exhibits 1 and 2 were admitted into evidence. Judicial notice was taken of the administrative filed and the contents therein.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or a voluntary quit without good cause?

**FINDINGS OF FACT:**

Having heard the testimony and reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part time deli clerk, with a set schedule. Her first day of work was September 18, 2018 and her last day worked was November 6, 2020. Claimant called on November 7, 2020 stating she was hurting, was not coming in to work and had a doctor appointment. Employer sent Claimant a copy of the FMLA policy, the FMLA leave form, the certification of health care provider form, and the job description on November 10, 2020. ER Exhibit 1. The documents talk about the need for the forms to be submitted within 15 days of the request or the request may be delayed. Employer granted her up to 12 weeks of FMLA leave from her calling asking for leave on November 7, 2020. Claimant never returned any of the forms. February 11, 2021, Employer determined claimant quit for personal reasons as claimant never came back from leave and employer had not heard from claimant nor received paperwork from claimant. ER Exhibit 2. The form does say it is ok to rehire claimant. This is thirteen weeks and five days after November 7, 2020.

May 26, 2021, Claimant called regarding her job and was told it would be for a rehire and she needed to turn in her paperwork, particularly her medical release as to whether she could perform

her job. June 7, 2021, claimant was cleared to return to work with permanent weight lifting restrictions.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit her employment due to claimant not returning to work after the end of her leave. She attempted to return approximately four months later, but then it would have been as an applicant for rehire.

Iowa Admin. Code r. 871-24.22(2)j(2) 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.

(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.

Claimant was on a FMLA leave of absence, which provides for a maximum of twelve weeks. When the leave time ended, the employer had not heard back from claimant, employer gave twelve additional days before finding claimant voluntarily quit by not returning from the leave of absence. Claimant did not contact employer until six weeks and one day after employer found her to have voluntarily quit. Claimant was not released for returning to work until sixteen weeks and four days after employer found her to have voluntarily quit. Claimant is not understanding that her efforts were not to be brought back from her FMLA, but to be rehired since she did not timely return from her leave. The voluntary quite date is not November 6, 2020, the last day she worked, but February 11, 2021, once her leave expired and she failed to return to work.

**DECISION:**

The August 3, 2021, (reference 01) unemployment insurance decision is **MODIFIED**. Claimant's voluntarily quit is without good cause attributable to the employer. Her quit date is modified to February 11, 2021, from the original finding of November 6, 2020. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



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Darrin T. Hamilton  
Administrative Law Judge

October 14, 2021  
Decision Dated and Mailed

dh/mh