

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GUADALUPE LEYVAMACIAS
Claimant

APPEAL NO. 11A-UI-09977-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

**OC: 06/12/11
Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Guadalupe Leyvamacias (claimant) appealed a representative's July 18, 2011 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Beef Products (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 22, 2011. The claimant participated personally. The employer participated by McKenzie Harris, human resources coordinator, and Jennifer Stubbs, human resources benefits supervisor. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant is denied unemployment insurance benefits because she voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on October 12, 2010, as a full-time sorter. The claimant requested and was granted medical leave from January 3 through April 20, 2011, for the birth of her son.

The claimant had gall bladder surgery on April 20, 2011. She did not contact or request additional time off from the employer. The employer assumed the claimant had quit work when she did not return to work or contact the employer by April 21, 2011. The claimant's physician released the claimant to return to work on July 22, 2011. The claimant did not provide this note to the employer. The claimant filed for unemployment insurance benefits with an effective date of June 12, 2011

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982).

The claimant left work due to pregnancy under the advice of her physician. The employer consented to her leaving through April 20, 2011. The employer was unaware of any other medical condition that occurred and did not consent to the claimant's leave after April 20, 2011, because it had no information. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's July 18, 2011 decision (reference 02) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw