

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHIRLEY A JENKINS

Claimant

APPEAL NO. 10A-UI-01760-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSKALOOSA CARE CENTER INC

Employer

Original Claim: 01/03/10

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 25, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on April 16, 2010. Claimant participated. Employer participated through Administrator Tina Steffen. Denise Kitzmen did not participate.

ISSUE:

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a CNA from November 20, 2009 and was separated from employment on December 18, 2009. She quit after she hurt herself and was in pain after aggravating an old injury. She went to a chiropractor for an initial evaluation but could not afford the \$200 per month he intended to charge her. Nor did she go to an M.D. or D.O. She abandoned her trainer saying she could “not do this anymore” and left the building without further comment. She did not report an injury to the charge nurse or file a grievance about the other employee pursuant to the employer’s procedure and policy. She did not advise employer of her prior injury at the time of hire. She presented no evidence the aggravation was work related.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is separated from the 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.

871 IAC 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 court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Employment Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

The statute provides an exception where:

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 Code § 96.5(1)(d).

Section 96.5(1)(d) specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is fully recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346; *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n*, 468 N.W.2d 223, 226 (Iowa 1991) (noting the full recovery standard of section 96.5(1)(d)).

In the present case, the evidence clearly shows Gilmore was not fully recovered from his injury until March 6, 2003. Gilmore is unable to show that he comes within the exception of section 96.5(1)(d). Therefore, because his injury was not connected to his employment, he is considered to have voluntarily quit without good cause attributable to the employer, and is not entitled to unemployment ... benefits. See *White*, 487 N.W.2d at 345; *Shontz*, 248 N.W.2d at 91.

The claimant has not established that the injury was work-related, as is her burden. Thus, she must meet the requirements of the administrative regulation cited above. She has not presented medical evidence supporting her decision to quit. Accordingly, although the separation was for good personal reasons, it was without good cause attributable to the employer and benefits must be denied.

DECISION:

The January 25, 2010 (reference 01) decision is affirmed. The claimant temporarily separated from the employment 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 claimant obtains a full release to return to regular duties without restriction, offers services to the employer, and the employer has no comparable, suitable work available.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw