

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TABITHA A GARCIA
Claimant

APPEAL NO. 09A-UI-15757-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPECIALIZED SUPPORT SERVICES INC
Employer

OC: 01-11-09
Claimant: Appellant (1)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 12, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on November 23, 2009. The claimant did participate along with her witnesses Lori Murphy, her Mother. The employer did participate through Derik Shields, Executive Director and Melissa Jameson, Program Director. Employer's Exhibit One was received.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a director care staff worker part time beginning June 29, 2009 through September 15, 2009 when she voluntarily quit her job.

The claimant was pregnant and no longer felt she could safely perform the job tasks. The claimant was not required to lift a resident, despite her desire to do so. The claimant was told she did not have to lift the resident and knew that she did not have to do so prior to quitting the job. The claimant did not have any work restrictions from her physician as a result of her pregnancy. The claimant chose to quit because she no longer wanted to perform her job duties because she felt they were unsafe. She has no medical opinion to back up her allegations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 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 § 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 § 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's pregnancy is not a work-related injury or illness. Thus, she must meet the requirements of the administrative regulation cited above. She did not present evidence in writing to the employer that the physician suggested leaving the employment. No work restrictions were in force. The employer was not obligated to accommodate any work restrictions that may have been imposed due to pregnancy. The employer was not obligated to change the work duties or requirements to suit the claimant. The claimant's choice to quit was without good cause that can be attributed to the employer, thus, benefits are denied.

DECISION:

The October 12, 2009, reference 02, decision is affirmed. The claimant voluntarily left her 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css