

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELMA KRGO**  
Claimant

**APPEAL NO. 09A-UI-18087-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE BON-TON DEPARTMENT STORES INC**  
Employer

**Original Claim: 10/18/09  
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated November 24, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits, finding that the claimant offered to return to work following an illness or injury but that no work was available. After due notice was issued, a telephone conference hearing was scheduled for and held on January 5, 2010. The claimant participated personally. The employer participated by Ms. Sandi McMahon, human resource manager.

**ISSUE:**

At issue is whether the claimant left employment but subsequently attempted to return after recovering from her illness or injury.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Elma Krgo was employed as a part-time beauty advisor for Bon-Ton Department Stores from April 26, 2004, until July 10, 2009, when she left employment due to pregnancy.

The claimant had advised her employer that due to her pregnant condition, she could not continue working and would have to leave employment until approximately six weeks after the birth of her baby. Because the claimant had not maintained a full-time status with the company, she was not eligible at that time for a leave of absence.

After delivering her baby and recovering, the claimant attempted to return to work, contacting a store manager. The claimant was then told at that time that no additional employees were being hired by the company. The claimant reasonably believed that contacting a manager would suffice and did not understand that she needed to directly contact the human resource department in order to offer services to the company.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant attempted to return to work following an illness or injury that had previously required her to leave employment. It does.

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 24.26(6)a provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The evidence in the record establishes the claimant was separated due to a non-work-related medical condition and then upon recovery, after delivering her baby, the claimant returned and offered to perform services for the employer but no suitable or comparable work was available. The claimant acted in a reasonable manner by presenting herself to a department manager who the claimant reasonably believed had the authority to rehire her. The claimant was told at that time that there was no additional work available. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated November 24, 2009, reference 01, is affirmed. The claimant offered to return to work after quitting due to a non-work-related illness or injury and no work was available. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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