

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORANN L SIERRA
Claimant

APPEAL NO: 09A-UI-05118-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALDS
Employer

OC: 01/18/09
Claimant: Appellant (2)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Lorann L. Sierra (claimant) appealed a representative's March 19, 2009 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from McDonalds (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 28, 2009. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on January 9, 2008. She worked part time (20 to 25 hours) as a shift manager at the employer's East Moline, Illinois restaurant. Her last day of work was on or about September 25, 2008. She voluntarily left the employment as of that date due to pregnancy and the birth of her baby on October 2. She had anticipated returning to work in about eight weeks, approximately the beginning of December.

On or about December 3 she called the employer to see about returning to the employment. She did not hear back until she spoke to the store manager on or about December 8, and even then the employer indicated only that it would call the claimant back on or about December 17 if she could return to the employment. The claimant did not hear further from the employer, so she was not returned to the employment.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit, she would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Where the quit is for medical or health reasons, the quit is disqualifying at least until the claimant has recovered and seeks to return to work unless the medical or health issue is attributable to the employer. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b.

Where a claimant has been compelled to leave employment due to a medical or health issue not caused or aggravated by the work environment, the claimant is not eligible to receive unemployment insurance benefits until or unless the claimant then recovers, is released to return to work by her physician, and in fact does attempt to return to work with the employer. 871 IAC 24.25(35).

Here, the claimant was released to return to work; she did seek to return to work with the employer, but her position was no longer available to her. “Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Even though the employer had a good business reason for proceeding to fill the claimant’s position, the separation is with good cause attributable to the employer and benefits are allowed.

As the employment was entirely outside the state of Iowa, the employer’s chargeability for any benefits paid in any new benefit year and base period would be determined by the state in which those wage credits were accrued.

DECISION:

The representative’s March 19, 2009 decision (reference 02) is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, if the claimant is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css