

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTINA SMITH
Claimant

APPEAL NO: 09A-UI-06301-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF DES MOINES
Employer

OC: 03-08-09
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 16, 2009, reference 01, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 15, 2009. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant voluntarily left her employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed for Manpower from August 8, 2007 to February 2, 2009 when she went on maternity leave. She was assigned to work at Principal Financial Group and maintained contact with the employer while on leave. The claimant was ready to return after five weeks but her boss was on vacation so she planned to return to work March 16, 2009. She found out on March 10, 2009, that she could not return to her assignment because the client was going to outsource the work that she had been doing. The claimant immediately contacted the employer but no work was available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer.

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 24.25(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 claimant went on a medical leave of absence due to a non-work-related medical condition. She would only be eligible for benefits if her position were not available to her after her recovery. A "recovery" under Iowa Code section 96.5-1-d means a complete recovery without restriction. White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992) (citing Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985)). The claimant was released without restriction but no work was available because the employer outsourced her job. Accordingly, the claimant's separation is considered to be a voluntary quit with good cause attributable to the employer and benefits are allowed.

DECISION:

The April 16, 2009, reference 01, decision is reversed. The claimant voluntarily quit her employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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