

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SALLY J HECKETHORN
Claimant

INSIGHT PARTNERSHIP GROUP LLC
Employer

APPEAL 16A-UI-09300-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/07/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 23, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on September 13, 2016. The claimant participated personally. The employer participated through Deborah Connor, Director of Business Operations. Amy White and Amanda Cosgrove also attended on behalf of the employer. Claimant exhibits A, B, and C were received into evidence. Based on the evidence, the arguments presented, 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 the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a life skills specialist and was separated from employment on August 8, 2016.

In this case, the claimant began a leave of absence under FMLA effective June 8, 2016, for stress and exhaustion and due to a family member who was ill. The claimant initially presented the employer a doctor's note, dated June 7, 2016, recommending the claimant be off work for four weeks (Claimant exhibit A). Then in the completion of the claimant's FMLA paperwork, her treating physician recommended a leave of absence until August 8, 2016 (Claimant exhibit C). The claimant assumed that she would be placed on the schedule effective that day.

However, the employer informed the claimant that she would need medical documentation from her physician reflecting she had been released from care and could return to work. The claimant indicated the entire FMLA process involved the employer giving her "the run around" and involved "game-playing". The employer contended the June 10, 2016 FMLA paperwork in

which the treating physician referenced an expected return to work date of August 8, 2016 was not a valid return to work release from the claimant's treating physician. The claimant refused to obtain or furnish an updated doctor's note that reflected her doctor's recommendations after the leave of absence began. Separation thereby ensued.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant separated from the employment without good cause attributable to 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.

Iowa Admin. Code r. 871-24.25(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.

In this case, the claimant's FMLA expired on August 8, 2016. The claimant presented the employer a physician's statement regarding her medical condition at the beginning of her FMLA leave of absence, dated June 8, 2016 (Claimant exhibit A), indicating the claimant was expected to be off work for four weeks. However, in the completion of the FMLA paperwork, on June 10, 2016, the treating physician extended the leave of absence to eight weeks, referencing an expected return to work date of August 8, 2016 (Claimant exhibit C).

The last doctor's note furnished was dated June 10, 2016, at the beginning of the claimant's leave of absence. The claimant furnished no competent medical information showing she had been released without restrictions from medical care, and relied solely on the doctor's notes from the start of her leave of absence. The claimant expected to automatically be placed back on the schedule effective August 8, 2016. When the employer made the claimant aware that it needed a doctor's note that was furnished upon the completion of her care, the claimant refused to comply with the request. The administrative law judge finds the employer's request was reasonable under the circumstances, as it is not uncommon for conditions to change after the onset of a diagnosis, or leave of absence. In fact, the claimant's own treating physician first referenced a four week leave on June 8, 2016 (Claimant exhibit A) but then two days later extended the absence to August 8, 2016 (Claimant exhibit C).

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. Emp't 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 administrative law judge is sympathetic to the claimant's need for a leave of absence and subsequent desire to return to work. However because the claimant failed to provide certified medical documentation supporting a return to work, she has not established that the quit was for good cause. Accordingly, benefits are denied.

DECISION:

The August 23, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs