

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTI K SYMONDS

Claimant

APPEAL NO. 09O-UI-03676-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC

Employer

OC: 10/05/08

Claimant: Respondent (1)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.26(6) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 15, 2009, reference 03, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 2, 2009. Claimant did not respond to the hearing notice instructions and did not participate. Employer participated through Amy MacGregor.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as clerical at Auto Jet and was employed from May 4, 2008 until August 15, 2008 when she said she was sick and went to the hospital. She was released on September 2 and called employer on September 8, 2008 to offer her services but no jobs were available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no work was available to the claimant upon her release to return to work from a non-work-related injury.

Iowa Code § 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.

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 24.26(6)b provides:

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

b. 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.

Although she may have been released from the hospital on September 2, employer has not presented evidence she was able to work before she called seeking work on September 8. The claimant's return to the employer to offer services after the medical recovery evinces an intention to continue working. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed.

DECISION:

The January 15, 2009, reference 03, decision is affirmed. Claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs