

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LARITZA N MONT REYES**  
Claimant

**APPEAL 18A-UI-09584-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLSTEEL INC**  
Employer

**OC: 08/19/18**  
**Claimant: Appellant (1)**

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 September 11, 2018 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her employment. The parties were properly notified of the hearing. A telephonic hearing was held on October 2, 2018. The claimant, Laritza N. Mont Reyes, participated. The employer, Allsteel, Inc., participated through Ashley Steffens, Member and Community Relations (MCR) Generalist; and Malia Maples of Employer's Edge, L.L.C., represented the employer. Spanish/English interpreter Enrique (ID number 4949) provided interpretation services for the hearing. Claimant's Exhibit A was received but was not admitted as the employer was provided an illegible copy and could not read the exhibit. Claimant was instructed that she could testify about the exhibit during her testimony.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as production coordinator 2, from December 11, 2017 until August 18, 2018, when she quit. Claimant last reported to work on August 10, 2018. She decided to quit because of health problems related to her pregnancy. Claimant called into work on August 13 and reported that she was not feeling well and she was pregnant. Subsequently, claimant was admitted into the hospital for dehydration and exhaustion. Claimant sent a text message to her team leader and said she had not left the hospital because she was dehydrated. She said she could not continue working and asked how to send her resignation. Before quitting, claimant had been trying to contact MCR but she was not successful. Steffens received the message from claimant's team lead regarding claimant's status on August 17. At that point, claimant had already missed work for a week. While claimant believed that she was at risk of being fired because of the amount of work she was missing, no one told her that her job was in jeopardy or that she was going to be fired if she did not quit.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation was without good cause attributable to the employer. Benefits are withheld.

Iowa Code section 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.

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 specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is *fully* recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346; *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n.*, 468 N.W.2d 223, 226 (Iowa 1991) (noting the full recovery standard of section 96.5(1)(d)). In the *Gilmore* case, the claimant was not fully recovered from his injury and was unable to show that he fell within the exception of section 96.5(1)(d). Therefore, because his injury was not connected to his employment and he had not fully recovered, he was considered to have voluntarily quit without good cause attributable to the employer and was not entitled to unemployment benefits. See *White*, 487 N.W.2d at 345; *Shontz*, 248 N.W.2d at 91.

In this case, claimant quit her employment because of her pregnancy. It does not appear that claimant's doctor told her to quit her employment. Rather, the testimony indicates that claimant quit because she was concerned that she was going to be fired based on her absences. Claimant told the employer she could not continue working and she never returned to her job. Claimant's separation from employment was without good cause attributable to the employer. Benefits are withheld.

#### **DECISION:**

The September 11, 2018 (reference 01) unemployment insurance decision is affirmed. Claimant separated from 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.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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