

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARLOTTA WINKLER**

Claimant

**APPEAL NO. 09A-UI-008442-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SIGLER PRINTING & PUBLISHING INC**

Employer

**OC: 05/03/09**

**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 4, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 30, 2009. Claimant participated. Employer participated by Laurie Henders, Human Resources Manager, and Kristin Olson, Human Resources Manager. The record consists of the testimony of Carlotta Winkler; the testimony of Laurie Henders; the testimony of Kristen Olson; and Claimant's Exhibits A-D.

**ISSUE:**

Whether the claimant voluntarily left for good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked for the employer running a machine known as the Horizon. She had been employed since April 2002. On June 2, 2008, the claimant became seriously ill and was hospitalized for a condition that was non-work-related. She was placed on FMLA leave by the employer for 12 weeks. In addition, the claimant was qualified to receive first short term and then long term disability benefits from the employer. The claimant's FMLA leave expired on August 25, 2008. The claimant was still not able to return to work. The employer, however, continued to keep the claimant's job open even after the expiration of the FMLA leave.

The claimant's medical problems persisted and she was still not able to return to work. On March 25, 2009, the employer terminated the claimant's employment. At the time of termination, the claimant had still not been released to return to work. She was receiving long term disability benefits from The Principal, the employer's insurance carrier for disability benefits.

## REASONING AND CONCLUSIONS OF LAW:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in this case established that the claimant had left her job due to an illness which was not caused or aggravated by her employment or a pregnancy. She left on the advice of her physician. The employer complied with the provisions of the Family Medical Leave Act and kept the claimant's job open for 12 weeks. Even after those 12 weeks expired, the claimant's job was still left open. The claimant did not return to the employer and offer her services nor did she obtain the certification of a physician that she was able to return to work. As of March 25, 2009, the claimant was unable to perform all of the duties of her job.

Iowa law is clear that under these circumstances the claimant is presumed to be a voluntary quit without good cause attributable to the employer. Benefits are therefore denied.

**DECISION:**

The decision of the representative dated June 4, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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