

#### FINDINGS OF FACT:

The claimant started working for the employer on August 2, 2004. She worked full time as a cook in the employer's long-term care nursing facility. Her last day of work was February 27, 2005. She called in absences on February 28 and March 1, 2005, because of a need to care for her terminally ill brother-in-law, who resided in her home and for whom she held the medical power of attorney. Her brother-in-law had been taken to the hospital on or about February 28 and had been placed on life support. When she called in on March 1 and spoke to her supervisor, Ms. Martin, Ms. Martin agreed to place the claimant on a general leave of absence status through March 6, with the understanding she would return to work at 5:00 a.m. on March 7, 2005.

On the evening of March 6, the claimant contacted the employer and informed the employer that her brother-in-law was still on life support, that the doctor had indicated her presence was necessary, and that she therefore could not return to work at 5:00 a.m. the next morning. The employer advised her that if she did not return to work as scheduled, her employment would be ended. The claimant did not return to work March 7, and the employer considered her to have voluntarily terminated her position in order to care for her family member.

The claimant's brother-in-law was released on March 9, 2005, and at that time the claimant contacted the employer to learn if she could return. The front desk person to whom the claimant spoke indicated that the claimant's position had been filled. The claimant left messages for her supervisor and the department supervisor to call her, both on that day and on other occasions between March 9 and approximately April 1, 2005, but she received no return call.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code section 96.5-1-c 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The claimant did express her intent not to return to work with the employer at the end of the leave of absence time granted by the employer. Therefore, the claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code Section 96.6-2.

871 IAC 24.26 provides in pertinent part:

The following are reasons for a claimant leaving employment with good cause attributable to the employer: . . .

(8) The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or by marriage.

Under the facts of this case, the claimant's brother-in-law did qualify as a member of the claimant's "immediate family." A voluntary quit can be for good cause attributable to the employer even if the employer is free from any negligence or wrongdoing. Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956); Shontz v. IESC, 248 N.W.2d 88 (Iowa 1976). The claimant's original voluntary quit was for good cause under these provisions. However, the claimant must also demonstrate that she sought to return to work, but no work was available. The claimant has also satisfied this burden. While the employer had a good business reason for not extending the claimant's leave and proceeding to fill her position after March 7, 2005, the claimant's quit is held to be for good cause attributable to the employer. Benefits are allowed, if the claimant is otherwise eligible.

#### DECISION:

The representative's September 12, 2005 decision (reference 01) is modified with no effect on the parties. The claimant voluntarily left her employment in order to care for an ill or injured

family member, and did seek to return to work, but no work was available. Benefits are allowed, if the claimant is otherwise eligible.

ld/kjw