

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LAURIE L LIGHT**  
Claimant

**GERRI'S INC**  
Employer

**APPEAL 18A-UI-07428-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/10/18**  
**Claimant: Appellant (5)**

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury  
Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the July 3, 2018 (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on July 27, 2018. The claimant, Laurie L. Light, participated personally. The employer, Gerri's Inc., participated through witness Tammy Howard. Claimant's Exhibit A was admitted. Employer's Exhibits 1 was admitted.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant filed an initial claim for benefits effective June 10, 2018. Claimant was employed full time as a server, bartender and cook. Claimant was employed from May 11, 2015 until June 21, 2018, when she voluntarily quit. Janine Sturdivant was claimant's immediate supervisor. This employer operates a bar. Shawna Sturdivant was a co-worker with claimant and was Janine's daughter.

On Sunday, May 13, 2018, claimant suffered a personal injury. She went to the hospital and had several broken ribs and a head injury. She was unable to work and spoke to Shawna on May 14, 2018 about her injuries. Shawna told the claimant that she would cover her remaining shifts for the week.

On Friday, May 18, 2018, claimant was admitted to the emergency room again regarding her injuries. Claimant's brother telephoned Shawna and told her that claimant was not coming to work because she was at the hospital. Shawna left a voicemail message for claimant asking her to call and let her know how she was recovering. Claimant did not come to work or contact

the employer until May 30, 2018, when she told Shawna that her ribs were broke and that the doctor said it could take up to six weeks to heal.

On June 7, 2018, claimant visited with Shawna about coming back to work. Shawna asked claimant to stop back the following day. However, claimant was not fully healed at this time and was unable to move very well, could not lift her arms and had difficulty breathing. Claimant was not fully recovered from her injuries until June 21, 2018.

On June 8, 2018, claimant stopped at the bar again to discuss with Janine when she could come back to work. Janine was not there at that time. Shawna told claimant that she would have Janine call her. Janine did not call claimant back. Claimant never contacted Janine about coming back to work once she was fully healed as of June 21, 2018.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

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(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
  - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

First, it must be determined whether claimant quit or was discharged from employment. A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Claimant never contacted Janine about coming back to work after she was fully healed from her personal injury. Claimant fully healed from her personal injury on June 21, 2018. No further contact was made with the employer by claimant since June 8, 2018. Claimant's failure to contact the employer after she fully healed to return to work is considered a voluntary quitting.

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.

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. Empl'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)).

An employee's failure to return to the employer and offer services upon recovery from an injury "statutorily constitutes a voluntary quit and disqualifies an individual from unemployment insurance benefits." *Brockway v. Empl't Appeal Bd.*, 469 N.W.2d 256 (Iowa Ct. App. 1991). Subsection d of Iowa Code § 96.5(1) provides an exception; however, 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 (Iowa 1992); *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa 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 he 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.

Given that the injury was not work-related and claimant failed to return to the employer after fully recovering on June 21, 2018, the separation is without good cause attributable to the employer and benefits must be denied on that basis.

Further, Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits 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.

(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

*a. Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar 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 personal injury claimant suffered from was not work-related. She was unable to lift her arms, move very well or breathe without difficulty due to this injury. Claimant was not fully healed until June 21, 2018. She filed her claim for unemployment insurance benefits effective June 10, 2018, as such, claimant was unable to work from June 10, 2018 until benefit week-ending June 23, 2018 due to her personal injury. Benefits are denied on this basis as well between June 10, 2018 and June 23, 2018 due to claimant's inability to work due to personal injury.

**DECISION:**

The July 3, 2018 (reference 01) unemployment insurance decision is modified with no change in effect. Claimant voluntarily quit the employment effective June 21, 2018 without good cause attributable to employer. Claimant was unable to work due to personal injury from June 10, 2018 through June 23, 2018. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs