

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLISON HARPOLD
Claimant

APPEAL NO. 12A-UI-10877-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADP INC
Employer

OC: 07/22/12
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Allison Harpold filed a timely appeal from the August 31, 2012, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on October 3, 2012. Ms. Harpold participated. Joseph Ojeda represented the employer and presented testimony through Marla Jordan and Julie Fitzpatrick. Exhibit One was received into evidence.

ISSUE:

Whether Ms. Harpold separated from the employment for a reason that disqualifies her for unemployment insurance benefits. The administrative law judge concludes that Ms. Harpold voluntarily quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Allison Harpold was employed by ADP, Inc., as a full-time Senior Benefits Representative from 2004 and last performed work for the employer on May 16, 2011. At that time, Ms. Harpold began an approved medical leave of absence under the Family and Medical Leave Act. The leave was prompted by complications Ms. Harpold was experiencing in her pregnancy. Ms. Harpold exhausted her FMLA on August 23, 2011. The employer then approved an additional period of non-FMLA medical leave. Ms. Harpold delivered her baby on October 27, 2011. Ms. Harpold was released by her doctor to return to work effective December 22, 2011. Though Ms. Harpold testified that her child was six weeks old as of the December 22, 2011 return to work date, the administrative law judge notes that Ms. Harpold was released to return to work exactly *eight* weeks after she had delivered her baby.

Ms. Harpold did not return to work in response to being released by her doctor to return to work. Instead, shortly before the return to work date, Ms. Harpold requested that the employer allow her to take two more weeks as vacation before requiring her to return to work. Ms. Harpold had not started her search for day care until after her child was born. Ms. Harpold wanted part-time day care for her baby. Ms. Harpold learned that part-time day care was not as readily available or economical as full-time daycare. Ms. Harpold located a part-time daycare provider, but she could not get her child into the daycare for a couple weeks beyond her return to work date.

Ms. Harpold did not consider finding another temporary daycare provider as a stopgap measure.

After the employer denied Ms. Harpold's request for additional time beyond her December 22, 2011 return to work date, Ms. Harpold submitted a written resignation by email on December 21, 2011.

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(17) 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:

(17) The claimant left because of lack of child care.

871 IAC 24.25(23) 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

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.

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. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, 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. 871 IAC 24.22(j)(2).

The evidence in the record establishes that Ms. Harpold voluntarily quit the employment because she lacked appropriate child care for her baby at the time her medical leave expired. While Ms. Harpold had understandable personal reasons for quitting the employment, the voluntary quit was without good cause attributable to the employer. Accordingly, Ms. Harpold is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The Agency representative's August 31, 2012, reference 02, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs