

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIN L HAMILTON
Claimant

APPEAL NO. 11A-UI-06301-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AEROTEK INC
Employer

OC: 02-21-10
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 5, 2011, reference 05, decision that denied benefits. After due notice was issued, a hearing was held on June 8, 2011. The claimant did participate. The employer did not participate.

ISSUE:

Was the claimant discharged due to job-related misconduct or did she voluntarily quit her 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: The claimant was employed as an assembly line full time beginning one week in December 2010. The claimant injured her ankle prior to beginning work for the employer in a non-work-related incident. During the week she worked for this employer she worked Monday, Tuesday, was off Wednesday due to car problems, and worked Thursday. She went into the work site on Friday to pick up her check and told the employer she could not work her shift that night because her ankle was swollen up from the injury four weeks prior. She had not sought medical treatment. She was told that she needed to obtain a release from a doctor indicating she could work at the job before she would be allowed to return to work. The claimant never went to the doctor to obtain a release and never returned back to the employer for more work. The claimant simply stopped showing up for work after being told she needed a work release to return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit her employment without good cause attributable to the employer.

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.

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 § 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 § 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.

Claimant was obligated to obtain a release from her doctor that she was able to return to work, but did not do so. It was reasonable for the employer to require such a release. The claimant simply never went back to the employer at all. Under such circumstances the claimant's leaving is not attributable to the employer. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The May 5, 2011 (reference 05) decision is affirmed. Claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css