

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**SHELLEY L GRATOPP**  
Claimant

**EAST MARSHALL COMM SCHOOL DIST**  
Employer

**APPEAL 21A-UI-19110-ED-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 3/15/20  
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the August 19, 2021 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 20, 2021 at 9:00 a.m. Claimant participated and was represented by attorney, Kevin Hutchins. Employer did not participate. No exhibits were offered or admitted. Official notice was taken of the administrative record.

**ISSUE:**

Whether claimant's separation was a voluntary quit without good cause attributable to employer or a discharge for disqualifying job-related misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time kindergarten aid for 13 years ending August 2019. Claimant was not discharged, claimant voluntarily quit employment.

Claimant underwent a fifth back surgery in 2019. Her injury was not determined to be work related. Her treating physician advised claimant to stop working because sitting in small chairs while working with kindergarten age children was not conducive to her back recovery. Although claimant enjoyed her job and wanted to continue working, she followed her treating physician's advice and submitted a letter of resignation to her employer in August 2019.

Claimant's treating physician did ultimately release claimant from the majority her restrictions other than a weight lift restriction, which would have allowed the claimant to return to work. After being released from the majority of her medical restrictions, claimant did contact the employer to offer services. No positions were available to claimant at that time.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit work with good cause attributable to employer. Benefits are allowed.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

"Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). Where a claim gives numerous reasons for leaving employment the agency is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

Iowa Admin. Code r. 871-24.25(6), (35) provide:

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:

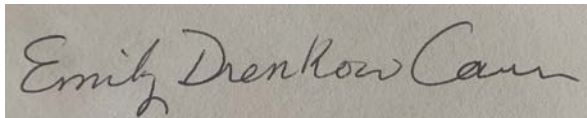
(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (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.

Claimant did leave because of the advice of a practicing physician. She also was released by that physician from her restrictions and contacted the employer after being released to return to work. Claimant's actions are in accordance with the requirements of Iowa Code section 96.5(1). Claimant voluntarily quit her employment due to the advice of her treating physician due to a non-work related injury. Because claimant did return to employer and offer her services upon release by her doctor, she has met the criteria for the exception to disqualification set forth in Iowa Code section 95.5(1)d. Claimant has met her burden of proving she voluntarily quit her employment for good cause attributable to employer. Benefits are allowed.

**DECISION:**

The August 19, 2021 (reference 01) unemployment insurance decision is reversed. Claimant voluntarily quit her employment with good cause attributable to employer. Benefits are allowed, provided she is otherwise eligible.



---

Emily Drenkow Carr  
Administrative Law Judge

October 28, 2021  
Decision Dated and Mailed

ed/scn