IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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PLEASANT CARE/GREENWOOD MANOR
C/O JERRY NICHOLLS & JARED POWELL
605 GREENWOOD DR
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Appeal Number: 05A-UI-05740-SWT
OC: 05/05/05 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 26, 2005, reference 01, that concluded she voluntarily quit her employment without good cause attributable to the employer. A telephone hearing was held on June 22, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Jerry Saltzman. Roger Holderman participated in the hearing on behalf of the employer with a witness, Ingrid Weber. Exhibits One and Two were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer as a certified nurse's aide from October 29, 2003 to January 25, 2005. The job involves working about 30 hours per week and includes lifting of patients and other items on a regular basis.

The claimant stopped working after January 25, 2005, because she had hip replacement surgery. She requested and received permission from the employer to be off work until she recovered from her surgery. She was considered to be on a medical leave of absence pending her recovery from her surgery. Her medical condition was not caused or aggravated by her work.

Effective April 28, 2005, the claimant's doctor released the claimant to return to work "to do vitals. No lifting. Walking as tolerated." Afterward, the claimant contacted the employer with her doctor's release. The claimant understood that doing vitals (i.e. taking pulse rate, temperature, and blood pressure) was not a regular job and would only provide her with minimal part-time work. The employer informed the claimant that she would have to be able to perform her regular job duties without restrictions before she would be allowed to return to work.

The claimant was issued a second work release on May 17, 2005, stating that the claimant could "return to normal duties with no lifting. Walking is permitted as tolerated." This restriction still prevents the claimant from doing all of her normal job duties, which require lifting. The employer informed the claimant that she would have to be able to perform her regular job duties without restrictions before she would be allowed to return to work. The employer has not discharged the claimant and the claimant does not intend to quit and has not informed the employer that she is quitting her job.

REASONING AND CONCLUSIONS OF LAW:

Three provisions of the unemployment insurance law disqualify claimants until they have been reemployed and have been paid wages for insured work equal to ten times their weekly benefit amount. An individual is subject to such a disqualification if the individual (1) is discharged for work-connected misconduct (Iowa Code § 96.5-2-a), (2) fails to accept suitable work without good cause (Iowa Code § 96.5-3), or (3) "has left work voluntarily without good cause attributable to the individual's employer." (Iowa Code § 96.5-1). Only Iowa Code § 96.5-1 has potential application here.

Iowa Code § 96.5-1-d provides that an individual who is subject to disqualification under Iowa Code § 96.5-1 is not disqualified:

> If the individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of 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.

The rule implementing Iowa Code § 96.5-1-d explains that "[r]ecovery is defined as the ability of the claimant to perform all of the duties of the previous employment." 871 IAC 24.26(6)a.

Generally, a voluntarily quit means a claimant exercises a voluntary choice between remaining employed and discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992), 871 IAC 24.25. Furthermore, an absence from work is not considered a voluntary quit where the worker intends a temporary interruption in his work and not a permanent severance of the employment relation. See Peck, 492 N.W.2d at 440; In re Johnson, 337 N.W.2d 442, 447 (S.D. 1983). In addition, the court has ruled: "for an individual to be disqualified from unemployment benefits under section 96.5(1), it must be demonstrated that the individual left work voluntarily and without good cause attributable to the employer. White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992) (emphasis added).

The issue then is whether a person is subject to voluntary quit disqualification under Iowa Code § 96.5-1 under the following circumstances. The person stops working because of illness or injury with a doctor's advice and notice to the employer of her need to be off work temporarily. The person then is released to work with restrictions that prohibit her from performing her normal job duties and the employer determines there is no work available for her with those restrictions. The person has never stated that she is quitting employment and has never intended to permanently sever the employment relation. The person remains willing and desires to return to work when the employer permits her to return. The employer has not terminated the claimant's employment.

The problem is that the case law points in several directions and has not addressed this issue head on. Additionally, the statute and rules are unclear as to this issue. For example, in Wills, 447 N.W.2d at 137, the Iowa Supreme Court considered the case of a pregnant certified nursing assistant (CNA) who went to her employer with a physician's release that limited her to lifting no more than 25 pounds. Wills filed a claim for benefits because the employer would not let her return to work because of its policy of never providing light-duty work. The court ruled that Wills became unemployed involuntarily and was able to work because the weight restriction did not preclude her from performing other jobs available in the labor market. Id. at 138. The court characterized the separation from employment as a termination by the employer, but in essence the employer informed the claimant that it did not have any jobs available meeting her restrictions and would not create a job to accommodate her restrictions. The court does not mention Iowa Code § 96.5-1-d. Perhaps significantly, the facts do not indicate that the claimant had stopped working at any point, and it was the employer who requested that she go to her doctor to get a release to continue working.

On the other hand, in White, 487 N.W.2d at 342, the Iowa Supreme Court considered the case of the truck driver who was off work due to a heart attack for about three months, returned to work for a month, and then was off work for seven months after a second heart attack. He then returned to his place of employment and informed management that his doctor had instructed him that he was unable to drive because of his pacemaker device. The employer told the claimant that there was no available work for him with his restriction. The claimant then applied for unemployment insurance benefits. Id. at 343. The facts did not indicate whether the claimant stated that he was quitting employment or intended to permanently sever the employment relationship at any point. In White, the court reversed the district court's decision that the claimant quit work involuntarily due to a physical disability and stated that "unemployment due to illness raises policy considerations which call for a continuation of the

rules laid out in cases antedating [the cases relied on by the district court] … Under these rules, if White's disability was not work-related, the agency properly imposed the disqualification. If, however, the cause of White's disability was work related, the disqualification was improper." Id. at 345. The court ultimately decided that there had been no determination as to whether the disability was or was not work-related and remanded the case. The court does not refer to or distinguish the Wills case. It does not explain how the first prong of the voluntary quit disqualification test set forth earlier in its decision—"it must be demonstrated that the individual left work voluntarily"—had been met.

Logically, there would be no need to refer to Iowa Code § 96.5-1-d or the rule (871 IAC 24.26(6)b) and case law dealing with work-related disability if the claimant had never quit employment at all because the claimant would not be disqualified under Iowa Code § 96.5-1. However, Iowa Code § 96.5-1 must be read in conjunction with § 96.5-1-d, to determine its meaning. Iowa Code § 96.5-1-d encompasses more than situations in which a claimant has permanently severed the employment relation due to illness, injury, or pregnancy. It states: "upon knowledge of necessity for absence [the individual] immediately notified the employer, or the employer consented to the absence." The reference to "absence" connotes a less than permanent separation from work. If Iowa Code § 96.5-1 applied only to a permanent leaving of employment, the language of Iowa Code § 96.5-1-d would be consistent with that scheme. Consequently, persons who stop working due to illness, injury, or pregnancy with a doctor's advice can be deemed to have "left work voluntarily" under Iowa Code § 96.5.1 even if they do not permanently separate from employment or intend to permanently sever their employment relationship. Such cases then provide an exception to the general rule that an employee must intend to permanently sever the employment relationship in order to be considered to have voluntarily quit employment. The Wills case, therefore, is distinguishable because the facts there did not indicate the claimant ever stopped working and it was the employer who insisted that she see the doctor. In Wills, the employer was the moving party regarding the separation from employment at every point in the process.

Since the claimant left work voluntarily in this case due to injury upon a doctor's advice, to avoid disqualification, she must demonstrate that the reason for leaving was attributable to the employer or that she has satisfied Iowa Code § 96.5-1-d.

The unemployment insurance rules provide that a claimant is qualified to receive benefits if compelled to leave employment due to a medical condition attributable to the employment. The rules require a claimant: (1) to present competent evidence that conditions at work caused or aggravated the medical condition and made it impossible for the claimant to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related medical condition and that she intends to quit unless the problem is corrected or condition is reasonably accommodated. 871 IAC 24.26(6)b.

The preponderance of the evidence establishes that the claimant's injury was not caused or aggravated by her employment. There is no medical proof that the claimant's injury was caused by her employment or that her employment aggravated her injury. Likewise, there is no competent medical evidence that the conditions at work made it impossible for the claimant to continue in employment due to a serious health danger. The facts do not establish that the claimant has met the qualifying conditions under 871 IAC 24.26(6)b for receiving benefits.

As a result, the claimant must meet the qualifying conditions of Iowa Code § 96.5-1-d and its related rule, 871 IAC 24.26(6)a, to be eligible for unemployment insurance benefits. The

clamant was off work based on her doctor's advice and informed the employer of her need to be absent from work. As of the effective date of her claim on May 1, 2005, however, the claimant had not fully recovered so that she could perform all of the duties of her previous employment. Unless and until the claimant satisfies these requirements and is not returned to work by the employer, she is disqualified from receiving unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated May 26, 2005, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until: (1) she has been paid wages for insured work equal to ten times her weekly benefit amount, or (2) she offers to return to work after her doctor releases her to perform all of her job duties but is not returned to her job or other comparable work by her employer.

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