

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDI L MCELROY
Claimant

APPEAL 16A-UI-11150-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 09/18/16
Claimant: Appellant (1)**

Iowa Code §96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 7, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 3, 2016. Claimant participated. Employer participated through Steve Lawrence, President. Claimant's exhibit A was entered and received into the record.

ISSUE:

Is the claimant temporarily separated from 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: Claimant was employed full-time as registered nurse beginning August 6, 2016 through date of hearing as she remains an employee. On September 13 the claimant hurt her knee in a non-work related injury. Since that time she has had work restrictions imposed upon her by her treating physician as outlined in claimant's exhibit A. The claimant had been placed by the employer to work at Bryan Medical Center. The director of nursing at Bryan Medical Center told the employer that unless the claimant was able to return to work without any work restrictions she would not be allowed to work there any longer. The employer has no job assignments for the claimant currently that would comply with her work restrictions from her treating physician. Once the claimant has all of her work restrictions lifted by her treating physician, the employer will place her back to work. The claimant has not yet received a full medical release from the treating physician.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is temporarily separated from 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.

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.

Claimant has not been released to return to full work duties and employer is not obligated to accommodate a non-work related medical condition. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The October 7, 2016, (reference 01) 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 or until such time as claimant obtains a full release without restriction to return to regular duties, offers services to the employer, and the employer has no comparable, suitable work available.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs