

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JESSICA J SAVINE**  
Claimant

**APPEAL NO: 18A-UI-07411-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PATHLAB LTD**  
Employer

**OC: 06/17/18**  
**Claimant: Appellant (1)**

Iowa Code Section 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 a timely appeal from the July 11, 2018, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on July 27, 2018. The claimant participated in the hearing. Missy Gorham, Supervisor, participated in the hearing on behalf of the employer. Claimant's Exhibits A and B were admitted into evidence.

**ISSUE:**

The issue is whether the claimant voluntarily left her employment with 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 a full-time specimen processor/phlebotomist for Pathlab from April 4, 2011 to August 4, 2017. She voluntarily left her employment because she was no longer able to perform her job duties after having left hip surgery.

The claimant had non-work related surgery on her left hip June 21, 2017, and was off work from June 21 through August 4, 2017. She resigned her position August 4, 2017. She knew she was not returning to work at Pathlab and consequently her surgeon did not provide any restrictions for the claimant and she did not present any restrictions to the employer. The claimant cited having to work at 4:00 a.m. every third weekend as a phlebotomist at the hospital as one reason for her leaving. When she worked as a specimen processor, she split her time between walking and sitting.

The claimant saw her surgeon July 25, 2018, more than one year after her surgery. He wrote a note in her chart under "Plan" stating, "The reason she left her previous job was due to her left hip injury and that her restrictions from her hip did not allow her to perform her previous job duties, and this continues to be the case" (Claimant's Exhibit A). The surgeon did not state the nature of any restrictions. The claimant was unable to work pursuant to medical advice from a

treating physician (Claimant's Exhibit A). She has not yet received a full medical release from the treating physician (Claimant's Exhibit A).

The claimant accepted employment at Simply Well immediately after resigning her position with Pathlab. She worked as an independent contractor for Simply Well until April 2018 when the company was bought out and the new employer decided not to use the lab where the claimant was working.

The claimant presented a note from her primary care physician, dated July 9, 2018, stating she can work "no more than five hours per day and no more than five days per week" (Claimant's Exhibit B).

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is temporarily separated from her employment without good cause attributable to the employer.

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.

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.

The claimant has not been released to return to full work duties and the 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.

The claimant is considered able and available for work effective July 9, 2018. However, that does not affect the outcome of this case.

**DECISION:**

The July 11, 2018, reference 01, decision is affirmed. The claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as the 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 the 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. The claimant is able and available for work effective July 9, 2018.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs