

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER ILG
Claimant

APPEAL NO: 09A-UI-03840-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANAMOSA NURSING HOME COMPANY
Employer

OC: 02/01/09
Claimant: Appellant (3)

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:

Jennifer Ilg (claimant) appealed an unemployment insurance decision dated March 3, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she was not able to work due to pregnancy. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 6, 2009. The claimant participated in the hearing. The employer participated through Margaret Stickle, Kelly Jo Bieber and Angie Thomas. Both parties waived formal notice so that the separation issues could be addressed in this hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time certified nurse's assistant from September 22, 2008 through February 11, 2009. Her treating physician placed her on a 25-pound lifting restriction on February 4, 2009. The claimant informed the employer, who could not accommodate the restriction since the claimant could not carry out the essential functions of her position with that lifting restriction. The employer told her she could return to work in a comparable position when she was released without restriction. The claimant voluntarily quit on February 11, 2009 when she turned in her uniform. She told the employer she did not know if she would be in the area after her baby was delivered. Her baby is due in May 2009 so she is expected to return to work in approximately July 2009.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant is able to work. The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The claimant testified she is able to work provided she lifts no more than 25 pounds.

The next issue to be determined is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code §§ 96.5-1. The claimant left her employment on February 11, 2009 due to a non-work-related medical condition.

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.

The claimant effectively went on a medical leave of absence due to a non-work related illness. She would only be eligible for benefits if her position were not available to her after her recovery. A "recovery" under Iowa Code § 96.5-1-d means a complete recovery without restriction. White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992) (citing Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985)). The claimant has not been released to return to full work duties. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The unemployment insurance decision dated March 3, 2009, reference 01, is modified in favor of the respondent. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs