

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMARAH A HARRIS
Claimant

ABRH LLC
Employer

APPEAL 18A-UI-08253-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/08/18
Claimant: Appellant (1R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 25, 2018, (reference 01), unemployment insurance decision that denied benefits based upon a determination that claimant quit without good cause attributable to the employer. The parties were properly notified of the hearing. A telephonic hearing was held on August 23, 2018. The claimant, Timarah A. Harris, participated. The employer, ABRH, L.L.C., participated through Stephen Berry, Acting General Manager; and Thomas Kuiper of Equifax/Talx represented the employer. Claimant's Exhibit A was received and admitted into the record.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a restaurant manager, from July 1, 2016, until July 1, 2018, when she quit. On June 13, claimant delivered a verbal resignation to Iesha, the General Manager of the restaurant. She told Iesha that she needed to quit because her lupus was causing her difficulty and she needed to return to be with her family in Chicago. Claimant stated she would finish out the month, and she was allowed to continue working until July 1, 2018. Claimant had talked with her doctor, and her doctor agreed that she needed to quit her employment and move to be near her family. Continued work was available, had claimant not quit her job. Claimant submitted a doctor's note stating that she was unable to work effective August 2, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant separated from employment without good cause attributable to the employer. Benefits are withheld.

Iowa Code §96.5(1) 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.

Iowa Admin. Code r. 871-24.25 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: ...

(2) The claimant moved to a different locality.

Iowa Code section 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.

Here, claimant was suffering from a non-work-related illness. While she credibly testified that she obtained the advice of her doctor to quit her employment, she has not yet received a release to return to work or attempted to return to her former employment. Additionally, it appears that she has not fully recovered, as claimant testified that she is not sure she could perform a full-time job at this time. Claimant quit her employment in order to take care of her health and move to be closer to her family. While these are certainly good personal reasons, there is no provision within the Iowa Code or administrative regulations that allows for benefits in this case. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The July 25, 2018, (reference 01), unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

REMAND:

The issue of whether claimant is able to work, available for work, and actively and earnestly seeking work is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn