

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA M GEYER
Claimant

APPEAL NO. 12A-UI-09478-S2T

**ADMINISTRATIVE LAW JUDGE
NUNC PRO TUNC DECISION**

**KRAUSE GENTLE CORPORATION
KUM & GO**
Employer

**OC: 07/24/11
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Lisa Geyer (claimant) appealed a representative's July 25, 2012 decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Kum & Go (employer). The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. The administrative law judge left a message for the employer. The employer did not return the administrative law judge's call before the record closed. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on March 19, 2012, as a full-time cashier. The claimant was pregnant and her physician issued her restrictions on April 25, 2012. The claimant was not to lift over 25 pounds or work longer than 8-hour shifts. The employer did not follow the restrictions. The claimant worked longer than 8-hour shifts without breaks or lunch. There was no place to sit during her working hours. She also unloaded trucks.

On May 5, 2012, at 4:00 a.m., the claimant was robbed at gunpoint. After the robbery, she was told to continue working and finish out her shift. She returned to work at 7:00 a.m. on May 6, 2012, and worked her shift. The claimant quit work when the employer would not follow her medical restrictions.

During the second week of July 2012, someone from the employer's corporate office called the claimant and the claimant agreed to return to work. The employer called the claimant the following day and refused to allow the claimant to return to work. The claimant filed for

unemployment insurance benefits with an effective date of July 24, 2012. The claimant had her baby on August 24, 2012. She is restricted from working through October 5, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

Iowa Code section 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.

871 IAC 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that she intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. Hy-Vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer of working conditions that were intolerable. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits.

The next issue is whether the claimant was able and available for work. For the following reasons, the administrative law judge concludes she is not from August 24 through October 5, 2012.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant is restricted from working from August 24 through October 5, 2012. She is considered to be unavailable for work from August 24 through October 5, 2012. The claimant is not eligible to receive unemployment insurance benefits from August 24 through October 5, 2012, due to her unavailability for work.

DECISION:

The representative's July 25, 2012 decision (reference 03) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is not eligible to receive unemployment insurance benefits from August 24 through October 5, 2012, due to her unavailability for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw/kjw