

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICKI L DUSENBERY**  
Claimant

**APPEAL NO: 07A-UI-07400-D**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JACOBSON INDUSTRIAL SERVICES**  
Employer

**OC: 07/01/07 R: 02**  
**Claimant: Appellant (1)**

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:**

Vicki L. Dusenbery (claimant) appealed a representative's July 26, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Jacobson Industrial Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on August 28, 2007. The claimant participated in the hearing. Nate Cloe appeared on the employer's behalf. During the hearing, Claimant's Exhibits A, B, and C were entered into evidence. 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:**

Did the claimant voluntarily quit for a good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 6, 2005. As of about June 2006 she worked full time as a janitor in the employer's client's packaging warehouse. Her last day of work was December 29, 2006.

On December 29 the claimant reported to her supervisor that she was having severe back pain; she indicate that she did not know if it had any relation to her job. She was allowed to leave work early to seek medical attention. On or about January 2, 2007, she provided the employer with a doctor's note indicating that she could do no lifting over ten pounds, no prolonged standing, and that she needed 15 minutes of rest every four hours. She also spoke with Mr. Cloe, the assistant operations manager, and indicated to him she did not believe the problem was due to her work. On January 8, she further indicated to Mr. Cloe that she could not return to her regular job, that she needed to have a sit-down job; his notes of the conversation reflected that the claimant had stated that she was quitting her current position.

The claimant's condition was diagnosed as degenerative disc disease. No medical opinion was offered as to the cause of the condition or the condition's relationship with the claimant's

janitorial job. The claimant received treatment including medication. On March 14, she was released by her doctor with at least semi-permanent restrictions against repetitive bending and stooping. The claimant could not have performed her prior janitorial duties with those restrictions. She did provide the employer with a copy of the March 14 release and sought reemployment in a position other than the janitorial position that did not require repetitive bending and stooping. However, while the employer would consider reemploying the claimant, since the claimant has been released with the current restrictions, the employer has not had work available for the claimant that would fit within those conditions.

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

If the claimant voluntarily quit she would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

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.

871 IAC 24.25(35) and (36) provide:

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.

(36) The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

871 IAC 24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The claimant may not have subjectively desired to end her employment, but she did express her intent that she had to cease working in the janitorial position, which is treated as a voluntary quit as she no longer is willing or able to perform the assigned work. 871 IAC 24.25(27).

The claimant has not provided appropriate evidence to establish that her condition was "caused or aggravated" by her janitorial job with the employer. Therefore, even when the claimant obtained a partial release with some restrictions, the employer was not compelled to provide the claimant with some other position that would meet the restrictions in order to avoid the separation from becoming a quit "attributable" to the employer. A "recovery" under Iowa Code section 96.5-1-d means a complete recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). The claimant has not been released to return to full work duties. Therefore, while the employer retains the option to rehire the claimant into a different position which she could do within her restrictions, the separation from the janitorial position is without good cause attributable to the employer. Unemployment insurance benefits are not intended to substitute for health or disability benefits. White v. Employment Appeal Board, 487 N.W.2d 342 (Iowa 1992). Therefore, while the separation was due to no fault on either side, unemployment insurance benefits must be denied.

**DECISION:**

The representative's July 26, 2007 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of January 8, 2007, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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