

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH COLON

Claimant

APPEAL NO: 12A-UI-05384-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

QUALITY ASSOCIATES INC

Employer

OC: 04-01-12

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 May 7, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 4, 2012. The claimant participated in the hearing with Attorney Elizabeth Norris and Interpreter Ike Rocha. Tracy Shouse, Human Resources Manager, 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 position due to a non-work-related injury or illness.

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 production packer for Quality Associates from November 8, 2010 to April 18, 2012. She was injured in a non-work-related incident January 23, 2012, and was unable to work pursuant to medical advice from a treating physician. There was a question of whether her injuries were work related so the employer placed her on light duty until March 6, 2012, at which time Mercy Occupational Health determined her condition was not work related. Consequently, the employer allowed her to work light duty until April 1, 2012. The claimant used paid time off from April 2 through April 12, 2012, and the employer offered her family and medical leave (FML) because she was unable to return to full duty work at that time and the light duty job ended. The claimant neither accepted the FML nor declined it before leaving the human resources office. Because the claimant did not notify the employer of her intentions with regard to FML, she remained on the schedule, but was a no-call no-show April 13, 16, 17 and 18, 2012, and the employer determined she voluntarily quit her job. The claimant has not yet received a full medical release from the treating physician.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant separated from her employment without 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 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The employer offered the claimant FML after Mercy Occupational Health determined her injuries were not work-related and she did not respond to the offer. Consequently, the employer left the claimant on the schedule but she failed to call or show up for work for four consecutive workdays in violation of the employer's policy. The claimant had a responsibility to notify the employer if she was interested in using FML or if she decided she did not want to use it, at which time she should have reported for work or notified the employer of her absence. Instead she left the human resources office without giving an answer regarding the FML and did not call or report for work after April 12, 2012, leaving the employer without any information regarding the status of her employment. While she would not have been paid while on FML, if she did not have any paid time off left, it would have secured her job for three months, at which time she might have been released to return to work without restriction. Instead, the claimant's actions in failing to respond to the offer of FML and failing to call or show up for work for four consecutive workdays evince an intention to quit her 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. Under these circumstances, the administrative law judge is forced to conclude the claimant voluntarily left her employment without good cause attributable to the employer. Therefore, benefits must be denied.

DECISION:

The May 7, 2012, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs