

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELAINE A MEDULAN
Claimant

NORDSTROM INC
Employer

APPEAL 15A-UI-14198-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/29/15
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 17, 2015, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on January 19, 2016. Claimant participated. Employer participated through human resources assistant, Jill McDowell. Caroline Semer of Equifax/Talx represented the employer.

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 as a picking processor from October 27, 2015. On September 14, 2015, as a part of the interview and hiring process for the job, the employer advised claimant an essential function of the job would involve five hours of reaching at or below the shoulders, lifting and lowering above the shoulder up to ten pounds up to two-and-one-half hours per day. Her last day of work was November 28, 2015. She had no-call/no-show absences on November 29, 30 and December 1, 2015, when continued work was available. She had a pre-existing personal injury to her arm and had difficulty lifting above her shoulder or head at work but did not have written medical restrictions. About a week before the separation she had asked four managers for help in transferring to the packing department. After not receiving a response from the four managers she “gave up” and discontinued reporting for work. She did not go to human resources with her concerns.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant’s separation from the employment was without good cause attributable to the employer.

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 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.

Iowa Admin. Code r. 871-24.25(27) and (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:

(27) The claimant left rather than perform the assigned work as instructed.

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

As to the inability to do the picking job, she did not have medical advice to quit or transfer to another area and did not ask human resources for assistance. Thus, the separation for that reason was not attributable to the employer. As to the no-call/no-show absences, an employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer.

DECISION:

The December 17, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs