IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KELLY M RITZE
Claimant

THE WALDINGER CORPORATION
Employer

APPEAL NO. 13A-UI-14055-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/17/13
Claimant: Appellant (2)

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 12, 2013, (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 15, 2014. Claimant participated. Employer participated through human resource accountant Charity Markman.

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 dispatcher and was separated from employment on November 21, 2013. Her last day of work was October 29, 2013. She gave her November 19 medical excuse to Becky Buch in human resources on November 21. Prior to that when she had been ill from pregnancy complications branch manager Jeremy Ries told her she did not need to present a medical excuse. Jason Booth M.D. wrote on November 19, that claimant should be excused from work and "may return to work once the work situation is addressed and resolved." The situation the doctor was referring to was bullying by coworker Mary Banker since claimant started the employment. After Banker confronted and yelled at claimant about an error Banker made in January 2013, Ries set up weekly meetings but they did not continue. Banker got upset and cried at her desk and said it was not fair she had to work so many hours because claimant was new. Banker went into another room and screamed to "release stress." Claimant started having panic attacks. Banker helped others but gave claimant the silent treatment. Most recently in October 2013, Banker commented to coworker Steve Walrath about claimant calling her a "part-timer" because of her pregnancy-related absences and said the only reason she was still working there was because her father got her the job; Banker took control of her job when she was sick and only left her to answer the phone. Banker would not help her or answer questions. Claimant reported concerns in a feedback form to human resource recruiter Kim Steele and to Ries. Continued work was available in spite of alleged performance issues.

Claimant is due to give birth on March 20, 2014, and is released for other work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment for no disqualifying reason.

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.

While a claimant must generally return to offer services upon recovery, subparagraph (d) of Iowa Code § 96.5(1) is not applicable where it is impossible to return to the former employment because of medical restrictions connected with the work. See *White v. EAB*, 487 N.W.2d 342 (Iowa 1992). Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. *Shontz v. IESC*, 248 N.W.2d 88 (Iowa 1976). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. *Raffety v. IESC*, 76 N.W.2d 787 (Iowa 1956).

Because claimant's treating physician directed her not to return until the situation aggravating her medical condition was resolved, the decision not to return to the employment according to his advice was not a disqualifying reason for the separation.

DECISION:

The December 12, 2013, (reference 01) decision is reversed. The claimant voluntarily left the employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs