IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

THERESA L LARSON
Claimant

COMPREHENSIVE SYSTEMS INC
Employer

APPEAL NO. 06A-UI-10858-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/03/06 R: 03
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 1, 2006, reference 01, that concluded the claimant voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on November 29, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Terra Wood, Attorney at Law. Sheryl Pringle participated in the hearing on behalf of the employer with a witness, Carolyn Olson. Exhibits A through D and 1 and 2 were admitted into evidence at the hearing.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a direct support staff worker in the employer's group home for individuals with disabilities from November 11, 2000, to July 31, 2005. Her job involved stooping, bending, crouching on the floor, and lifting clients.

The claimant has had periodic problems with back pain since 1994 for which she has received treatment. She was treated for lower back pain after helping push a car that had gotten stuck in December 2000. Afterward, an MRI of her spine was evaluated by her doctor as within normal limits. She also was cleared to work with no work restrictions after a physical examination done on January 22, 2004.

On August 1, 2005, she was admitted to the emergency room after the onset of lower back pain. After further treatment and evaluation by doctors, she was diagnosed with a bulging disk in her back. The claimant's work duties for the employer were a substantial factor contributing to her injury or aggravated her pre-existing medical condition.

The claimant notified the employer that she was unable to work due to back problems. She continued to be off work due to her back and discussed taking a medical leave. On August 9, 2005, the claimant met with her supervisors and the personnel director, Sheryl Pringle,

regarding taking a medical leave of absence. At that time, she did not assert her injury was work-related, but instead said she'd had back problems since the incident in which she pushed the car out of the snow in December 2000. Pringle informed the claimant that in order to be approved for a medical leave of absence under the Family and Medical Leave Act, she needed to have a doctor's statement excusing her from work. The claimant said she would keep in contact with the employer. No specific requirements were established about the frequency in which the claimant was to contact the employer.

On August 10, 2005, the claimant submitted a letter to the employer from her personal doctor stating: (1) the claimant had been hospitalized for severe lower back pain, (2) she'd had back pain for an extended period of time but it worsened with transferring clients, (3) lifting would aggravate her back problems, and (4) she would be off work at least six weeks when he would reassess her condition. Based on the letter, the employer approved her medical leave.

On September 30, 2005, the claimant's doctor submitted a second letter to the employer stating: (1) she continued to have back pain, which had been found to be associated with a disk defect, (2) her symptoms were the same but her back pain had improved since she was off work, and (3) she had an appointment for a second opinion regarding surgery on December 12.

After the September 30, 2005, letter was received by the employer, the claimant remained off work. As of February 17, 2006, the employer had not received any further medical excuses and had not had any contact with the claimant since September 2006. The employer determined based on the claimant's failure to keep in contact with the employer or provide further medical documentation regarding her condition that she had voluntarily quit employment. The employer did not make any attempt to contact the claimant about her work status.

On February 17, 2006, Pringle mailed a letter to the claimant stating that the latest doctor's excuse the employer had was dated September 30, 2005; the excuse expired on December 12, 2005; and the employer considered her to have voluntarily quit employment because no further documentation had been received. The claimant received the letter but did not contact the employer regarding her work status.

The claimant did not notify the employer that she had a work-related medical condition and she intended to quit unless her condition was reasonably accommodated.

The claimant filed a new claim for unemployment insurance benefits with an effective date of September 3, 2006, and was required to contact two employers every week. At the time of the hearing on November 29, 2006, the claimant could only recall applying for a position as a movie theater ticket taker, a rural newspaper delivery position (twice), and a transcription position at a local hospital.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

The claimant testified that she never quit her employment, she had contacted the employer two or three times after September 30, 2005, and she believed she had talked to Pringle after she received the letter in February 2006 to inform the employer that she had not intended to quit. The claimant testified that when she called after September 30, she asked for Pringle or the program director, Carolyn Olson, but they were not available so she left messages with the

receptionist that she was still not able to work but her messages were never returned. Pringle testified that the employer never heard anything from the claimant after September 30, 2006. She testified that she and the supervisors have voicemail and never received any messages from the claimant. She insisted she had never spoken to the claimant about the letter she had sent out informing her that the employer considered her to have quit.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. Pringle's testimony was much more credible than the claimant's. The claimant hesitated when asked who she had talked to after she got the letter and then said she "believed" it was Pringle. The recounting of the conversation was halting and unpersuasive.

The claimant's testimony about her work search efforts reflects negatively on her credibility. She filed for unemployment insurance benefits during the week of September 2, 2006, and was required to contact two employers every week for a total of 24 job contacts as of the time of the hearing. When asked about her job contacts for September, she initially spoke of attending a seminar about setting up a home-based internet business. Then when she was asked about specific jobs and employers, she hesitated and stated she applied for a ticket taker position and a rural newspaper route job. She could not remember any job she applied for in October, and when asked if she remembered her job contacts for the previous week, she said she had applied again for the rural newspaper route because she had noticed an ad for other opening (she had previously testified that she was waiting to hear back about the newspaper job she had applied for in September). When asked about the second job contact, she hesitated for several seconds and then stated she had applied to be a medical transcriber at a hospital. Even accounting for understandable memory problems, the claimant's testimony regarding her job contacts appeared less than truthful.

As a result, the preponderance of the evidence establishes the claimant did not have any contact with the employer after September 30, 2005, there was no medical documentation supplied after September 30 excusing her from work beyond December 12, and the claimant did not contact anyone with the employer after she received the letter in February 2006, which stated the employer considered her to have voluntarily quit employment due to the lack of medical documentation excusing her from work. The claimant, therefore, abandoned her job due to her lack of communication and the lack of medical evidence excusing her from work.

The unemployment insurance rules provide that a claimant is qualified to receive benefits if compelled to leave employment due to a medical condition attributable to the employment. The rules require a claimant: (1) to present competent evidence that conditions at work caused or aggravated the medical condition and made it impossible for the claimant to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related medical condition and that she intends to quit unless the problem is corrected or condition is reasonably accommodated. 871 IAC 24.26(6)b.

Since the claimant voluntarily quit employment due to a medical problem but has not fully recovered and offered to returned to work, which would qualify her to receive benefits under Iowa Code section 96.5-1-d, she is required to satisfy 871 IAC 24.26(6)b. The unemployment insurance rule 871 IAC 24.26(6)b codifies the case law for situations involving individuals who have left employment due to work-related health problems. See Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956) ("[W]here factors or circumstances directly connected with employment result in illness or disease to an employee and make it impossible for him to continue therein because of serious danger to his health, termination of employment

for this reason may correctly be said to be involuntary and for good cause attributable to the employer); McComber V. Iowa Employment Sec. Comm., 119 N.W.2d 792, 795-96 (1963) (allowing benefits where conditions at work "aggravated an allergy" that made it impossible for her to continue employment); Suluki v. Employment Appeal Board, 503 N.W.2d 402, 405 (Iowa 1993) ("[B]efore quitting, an employee must give an employer notice of work-related health problems and that the employee intends to quit unless those problems are corrected or the employee is otherwise reasonably accommodated."); Suluki, 503 N.W.2d at 405 ("[E]mployee must (1) offer competent testimony showing adequate health reasons existed to justify termination, (2) have informed employer of health problem, and (3) have remained available for work not inimical to employee's health," citing Allen v Commonwealth Unemployment Compensation Board, 501 A.2d 1170-71 (Pa. Commw. Ct. 1985)). See H.W. Shontz, D/B/A Shontz Body Shop V. Iowa Employment Security Commission, 248 N.W.2d 88 (Iowa 1976) (summarizing case law).

The evidence contains competent evidence that conditions at work caused or aggravated her medical condition and it was impossible for her to continue in employment in her normal job. There is no evidence, however, the claimant informed the employer before quitting that she intended to quit unless she was provided reasonable accommodation for her position. The claimant testified that the employer did not have work she could do, but the law requires her to request such an accommodation and allow the employer to make that judgment.

DECISION:

The unemployment insurance decision dated November 1, 2006, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/css