

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA M MOORE
Claimant

APPEAL NO: 06A-UI-10376-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 10/01/06 R: 03
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:

Donna M. Moore (claimant) appealed a representative's October 24, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Cargill Meat Solutions Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 8, 2006. The claimant participated in the hearing. Erica Bleck appeared on the employer's behalf. During the hearing, Employer's Exhibit One was 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 April 13, 2006. She worked full time as production worker in the employer's Wapello county pork processing facility. Her last day of work was on or about May 16.

Shortly after reporting for work on her last day, the claimant went to the employer's nurses' station as she was coughing, short of breath, and out of strength. After discussion with the nurse, her supervisor, and a human resources representative, the claimant went home early sick, knowing that even if she obtained a doctor's excuse she could be subject to discharge for having an absence in her 45-day probation period.

She decided to quit her job as she was not sure she could physically do the job and because she decided she did not wish to face potential discharge for being absent due to illness. Therefore, she came to the workplace the next day to turn in her gear and to sign a resignation notice upon which she stated the reason for quitting as "the job is just to (sic) physical for me, I just don't have the strength to pull ribs all day with my left hand (and) cut all day with my right, my left hand doesn't have enough strength."

The claimant subsequently learned she had bronchitis and sinusitis, from which it took her about three weeks to recover. The claimant did not attempt to return to work after recovering to discover if it had been her illness that had deprived her of having enough strength to do the job.

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 § 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), (36) 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 § 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 § 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 has not established by medical evidence that her condition was attributable to the employment. Upon recovery, she did not seek to return to her employment. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The representative's October 24, 2006 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of May 17,

2006, 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs