

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUDY D WEESE
Claimant

FLAGGER PROS USA LLC
Employer

APPEAL 15A-UI-09970-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/05/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 1, 2015, (reference 03) unemployment insurance decision that denied benefits based upon the determination she voluntarily quit work for personal reasons which is not a good cause reason attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on September 18, 2015. Claimant Judy Weese participated on her own behalf. Employer Flagger Pros USA LLC did not participate. Claimant's Exhibit A was received.

ISSUE:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a flagger beginning in July 2015, and was separated from employment on August 17, 2015, when she quit. The claimant has arthritis in her back and has had back surgery to correct her back problems. She began working as a flagger which required her to stand for over ten hours a day most of the time without any breaks. The claimant's back began to cause her pain and limit her range of motion. She saw her doctor on August 7, 2015, who stated that while she tried the flagger position, she was unable to do any job which required standing for more than two hours without a break and was unable to work more than eight hours in any given day. The claimant gave the note to the employer, but did not receive breaks and continued to work more than eight hours a day. The claimant quit her position a week later.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit her employment without 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.

Iowa Admin. Code r. 871-24.26(6)a 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.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

Iowa Admin. Code r. 871-24.25(35) 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:

(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.

The claimant argued her employment caused her injury. However, the doctor's note indicates she had arthritis prior to starting her position and is unable to perform any job requiring her to stand for over two hours without a break or work longer than an eight-hour day. The claimant has not provided any medical evidence to indicate the injury was work related. The claimant has not recovered or been released to perform all of the duties of the employment, and the employer is not obligated to accommodate a non-work related medical condition. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The September 1, 2015 (reference 03) decision is affirmed. Claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs