IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

HOLLY E WEBSTER
Claimant

TYSON PREPARED FOODS INC
Employer

APPEAL NO. 17A-UI-02638-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/25/16
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Holly Webster filed a timely appeal from the March 6, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Webster voluntarily quit on December 31, 2016 without good cause attributable to the employer and due to a non-work related medical condition. After due notice was issued, a hearing was held on March 31, 2017. Ms. Webster participated. Azucena Saavedra, Human Resources Manager, represented the employer. Exhibit 1 was received into evidence.

ISSUE:

Whether Ms. Webster separated from the employment for reason that disqualifies her for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Holly Webster commenced her employment with Tyson Prepared Foods, Inc. in 2009 and last performed work for the employer on November 5, 2015. Ms. Webster worked for the employer as a full-time stand-up forklift operator in the employer's shipping and receiving department. Ms. Webster's work day began 5:30 a.m. and ended sometime between 1:30 and 3:00 p.m., whenever the day's production was completed. Ms. Webster's immediate supervisor was Darrin Poyser, Shipping and Receiving Manager.

At some point after Ms. Webster concluded her shift on November 5, 2015, she fell on her front porch and injured her knee. Ms. Webster suffered a tear to her medical collateral ligament (MCL), a major knee ligament. Ms. Webster remained off work due to her knee injury. In April 2016, Ms. Webster underwent surgery on her knee. The surgeon kept Ms. Webster completely off work through October 18, 2016. While Ms. Webster was off work, she applied for, was approved for, and exhausted available FMLA leave. Until February 2016, Ms. Webster received short-term disability benefits. Ms. Webster then commenced receiving long-term disability benefits.

On September 28, 2016, Ms. Webster met with Azucena Saavedra, Human Resources Manager. Ms. Saavadra had been promoted from accounting clerk to human resources manager earlier that month. Ms. Webster told Ms. Saavedra that her doctor would not release her to return to her forklift operator duties and would only release her to perform sedentary work. Ms. Webster expressed concern to Ms. Saavedra that she was nearing the one-year anniversary of going off work. Ms. Webster told Ms. Saavedra that the former Human Resources Manager, Lucy Murguia, had told Ms. Webster earlier in the absence that if Ms. Webster was on leave from the employment for a year, the employer would deem the employment terminated. The employer has a written policy that states employees may remain on unpaid leave for up to a year. At the time of the September 29, 2016, Ms. Webster had not been released by her doctor to perform any work.

On October 19, 2016, the orthopedic surgeon provided Ms. Webster with a medical release document that released Ms. Webster to perform sedentary office work only. Ms. Webster's forklift operator duties had involved minimal sedentary office work. Ms. Webster had otherwise not performed sedentary or office work for the employer. Along with the restriction to sedentary office work, the surgeon restricted Ms. Webster from standing for more than an hour, from crouching, and from "excessive" walking.

Ms. Webster provided the medical release document to the nurse/safety manager at Tyson Prepared Food. The nurse/safety manager is Ms. Webster's mother. Ms. Saavedra received the medical release document on October 20, 2016. Pursuant to the employer's standard practices, Ms. Saavedra reviewed the positions the plant had open at the time to determine whether any of the open positions would meet Ms. Webster's work restrictions. The employer has 140 employees at the Council Bluffs plant where Ms. Webster had worked. Twenty of those employees are managers and perform office work as part of their duties. Outside the management staff, the employer only had two employees that performed significant office work. One of those employees was the accounting clerk. The other was the human resources clerk. The human resources clerk position was already filled by another employee. When Ms. Saavedra was promoted to Human Resources Manager in September 2016, the employer opened the accounting clerk position for internal applications. Ms. Webster's mother had alerted Ms. Webster to the opening. Though the position had closed for applications as of the time Ms. Webster was released to perform only sedentary office work, the employer reopened the position for internal applications during the period of October 18-20, 2016 to allow Ms. Webster an opportunity to apply for the position. Ms. Webster is a high school graduate. Ms. Webster does not have a background in accounting or bookkeeping. The employer ended up selecting a qualified internal candidate for the accounting clerk position. That person had 15 to 20 years' experience in payroll accounting.

On November 1, 2016, Ms. Saavedra conferred with the company's in-house ADA (Americans with Disabilities Act) advisors to discuss open positions in the plant and whether they would meet Ms. Webster's medical restrictions. None of the open positions would meet Ms. Webster's medical restrictions.

Rather than call the employment done effective November 5, 2016, after Ms. Webster had been absent for a year, the employer elected to extend Ms. Webster's approved leave of absence period to January 31, 2017. During that time, Ms. Webster continued to receive long-term disability benefits through the employment. During that time, Ms. Webster established a claim for unemployment insurance benefits that was effective December 25, 2016.

On February 3, 2017, when Ms. Webster had still not been released to return to her former duties and had not applied for any other positions with the company, Ms. Saavedra mailed a letter to Mr. Webster that stated as follows:

> This is to follow up on our recent conversations regarding your ability to resume your position with Tyson Foods, Inc. Your FMLA leave expired. You indicated that you could not work unless it was a sit down job and also mentioned that your doctor was not going to change your restrictions. On October 19, 2016, your general practice physician indicated that you could return to work in a permanent sit down job or office work only. He also stated the following restrictions; unable to stand for more than one hour, unable to crouch down to pick things up from the floor, and unable to do excessive amounts of walking. We gave you an additional three months of leave to try to accommodate your restrictions in the hopes it would prove beneficial to your recovery.
>
> We did explore whether it would be feasible for you to work in the following positions Ship/Rec/Dry Goods Operator, Green Weight Scale, Dry Room Operator, Material Handler, and Maintenance Generalist. It was determined that these options are not workable. Even if you could return, we concluded that we do not have any positions available that are sit down or office work.
>
> For these reasons, it is clear that you will not be able to do the essential functions of your job and regretfully we must terminate your employment. We hope for your speedy recovery and wish you well in future. Please let us know if we can be of assistance to you in any way.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
> c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
> d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

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 Administrative Code rule 817-24.26(6) provides as follows:

> 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.
> 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 weight of the evidence establishes a voluntary quit without good cause attributable to the employer and due to a non-work related injury. The separation from the employment occurred well before the employer sent its letter of February 3, 2017. By that point, Ms. Webster had been away from the employment for almost 15 months. The employer was not responsible for and did not initiate Ms. Webster going off work effective November 5, 2015. Rather, Ms. Webster left the employment at that that time upon the advice of her healthcare provider and due to a non-work related injury. Ms. Webster never recovered from the injury. Ms. Webster's doctor kept her completely off work for 11 months. Then Ms. Webster's doctor still did not release her to return to her former duties. Instead, the purported release restricted Ms. Webster from performing anything but sedentary office work. The evidence indicates that

Ms. Webster was not qualified to perform such work. She lacked the educational background and experience. While an employer has an obligation to provide an employee with reasonable accommodations that would allow an employee with a medical condition to continue in the work, the employer is not required to provide an unreasonable accommodation. See *Sierra v. Employment Appeal Board*, 508 N.W. 2d 719 (Iowa 1993). The employer was not required to hire Ms. Webster for the accounting clerk position for which she had no experience or to hire her for that position over the other highly qualify internal applicant. The employer was not required to create a sedentary office job for Ms. Webster.

Based on the evidence in the record and the applicable law, the administrative law judge concludes that Ms. Webster voluntarily quit the employment without good cause attributable to the employer effective November 5, 2015. Accordingly, Ms. Webster is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Webster may also requalify for benefits by complying with the requirements set forth above in Iowa Administrative Code rule 817-24.26(6)(a). Ms. Webster must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The March 6, 2017, reference 01, decision is affirmed, but the separation date is corrected to November 5, 2015. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to ten times her weekly benefit amount. The claimant may also requalify for benefits by complying with the requirements set forth above in Iowa Administrative Code rule 817-24.26(6)(a). The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs