

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

YOLANDA M BARNES
Claimant

APPEAL 16A-UI-08058-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 06/12/16
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(6)b – Work-Related Illness or Injury

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 14, 2016 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her employment for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on August 10, 2016, and was continued to August 15, 2016. The claimant, Yolanda M. Barnes, participated. The employer, Tyson Fresh Meats, Inc., participated through Kristi Fox, HR employee. Claimant's Exhibit A through E and Employer's Exhibits 1 through 3 were received and admitted into the record without objection.

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, most recently as a membrane skinner on the ham line, from December 21, 2009 until March 11, 2016, when she quit due to a work-related injury. Claimant had carpal tunnel surgery on her right hand in August 2015. (Exhibit C) Since that time, claimant continued having issues with her hand and her arm. In October 2015, claimant received a work restriction instructing her not to use vibrating tools with her right hand. (Exhibit A) Claimant had multiple visits with Dr. Thomas S. Gorsche, who she identified during her testimony as the employer's doctor and the worker's compensation doctor.

Claimant continued having issues with her hand and arm in 2016. Claimant met with Dr. Gorsche on January 14, 2016, and he reported that she might need a different position in the future, due to her hand cramping. (Exhibit E) Also in January 2016, claimant had a meeting with Brent Tapkin (the "green hat"), her supervisor, Jennifer (the nurse), and a worker's compensation person to discuss her issues. During this meeting, claimant explained that she was having continued hand cramping. The employer agreed to provide claimant with a light barrel as an accommodation. Claimant had this barrel for approximately one week, and then the employer took it away because it was a "special privilege." Claimant tried to report this

issue to Tapkin and get her barrel back, but he was never available. Additionally, everyone agreed that claimant would look for a different position to bid into that would be less strenuous for her.

In February 2016, Dr. Gorsche told claimant she needed to get a different job due to her hand and arm issues. Claimant reported this to the employer. She talked to HR Manager Jim Hook in early March 2016 and stated she needed a different job. Hook replied that he could not show claimant favoritism and go outside the bidding process to get her into a different position. Claimant testified that she also told Steve, her supervisor, that she would have to quit unless she got a different job or her pain improved. Claimant went into health services on March 8 and requested to see the doctor because she was in pain. Claimant gave her ID to Steve on March 11 and told him that she was quitting.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed.

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.

Iowa Admin. Code r. 871-24.26(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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant provided credible firsthand testimony, whereas the employer relied entirely on secondhand testimony from a human resources representative. The administrative law judge understands that the employer allocates its workforce as it sees fit, and the employer is not obligated to provide firsthand witnesses for each unemployment appeal hearing. However, the administrative law judge weighs all the evidence and finds firsthand testimony inherently more credible than testimony from an employee or representative who was not involved in the separation from employment.

Claimant has presented credible testimony and evidence that she had a work-related injury. Dr. Gorsche informed claimant that she needed to find a different job and leave her current job, as it was exacerbating her health issues. Claimant notified the employer that she needed a different job, and the employer did not provide her with any accommodation. Claimant told multiple people that she could not continue working in her current position, and she quit only after being told the employer could not move her from her current position. Claimant has established good cause to leave her employment. Benefits are allowed, provided she is otherwise eligible.

DECISION:

The July 14, 2016, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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