

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**DEANNE M HEATON
125 SOUTHVIEW DR
MARION IA 52302**

**NORDSTROM OIL COMPANY/
HANDIMART FOOD
PO BOX 66
CEDAR RAPIDS IA 52406-0066**

**Appeal Number: 04A-UI-07905-RT
OC: 06-27-04 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.4-3 - Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Deanne M. Heaton, filed a timely appeal from an unemployment insurance decision dated July 20, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on August 12, 2004 with the claimant participating. Glenn Sebolt testified for the claimant. Tracy Meza, Area Supervisor, participated in the hearing for the employer, Nordstrom Oil Company/Handimart Food. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time store clerk or sales associate from August 3, 2001 until she voluntarily quit effective June 7, 2004. On May 20, 2004, the claimant submitted a 17-day written notice to the employer indicating that she was going to quit effective June 7, 2004, her last day of work being June 6, 2004. The claimant quit because of her arthritis condition. The claimant alleged that her working conditions aggravated her arthritis condition. The claimant had had an arthritis condition for approximately five years. The claimant believed that the repetitive bending and standing aggravated her knees causing her pain. The claimant's physician did not tell the claimant she had to quit but advised that she do so. Approximately six to eight months before the claimant quit, she expressed concerns to her manager, Rick Fuhr, about this matter and requested that she go to part time. Mr. Fuhr consented and approved the claimant going part time. At no time did the claimant ever request any other accommodation from the employer. The claimant also never expressed any concerns to anyone else, including the employer's witness, Tracy Meza, Area Supervisor, who was occasionally in the store where the claimant worked. The claimant's position did require long periods of standing. However, in other situations the employer had accommodated employees by allowing them to sit. However, the claimant never requested such an accommodation and did not give the employer an opportunity to provide an accommodation to the claimant. At no time did the claimant ever indicate or announce an intention to quit to anyone if her concerns were not addressed or reasonably accommodated.

The claimant has placed no restrictions on her ability to work other than no prolonged standing. The claimant has been seeking typing positions or positions involving a computer or positions where a cashier can sit. The claimant has placed no restrictions on her availability for work. The claimant is earnestly and actively seeking work by making two in-person job contacts each week.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because she is and was not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for that reason.

Iowa Code Section 96.5-1 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.

871 IAC 24.1(113)a provides:

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 labor-saving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

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 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 parties concede that the claimant left her employment voluntarily and the administrative law judge so concludes that the claimant voluntarily quit her employment effective June 7, 2004. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant testified that the only reason she left her employment was that the employment required long periods of standing and bending, which aggravated her arthritis condition. However, the claimant had had an arthritis condition for five years, which was prior to her employment with the employer. Further, at fact finding the claimant indicated that her condition was not job related. At most, the claimant's job may have aggravated her arthritis condition. The claimant testified that her physician did not say that she had to quit. The administrative law judge is constrained to conclude that there is not present competent evidence showing adequate health reasons to justify termination. More compelling, the claimant testified that she only expressed concerns to the employer once, six or eight months prior to her voluntary quit, and at that time merely requested part-time employment which the employer provided. The claimant expressed these concerns to her manager, Rick Fuhr. She expressed no concerns to

the employer's witness, Tracy Meza, Area Supervisor, although Ms. Meza was in the store occasionally. The claimant never requested any other accommodation although Ms. Meza credibly testified that the employer does accommodate situations like this in attempting to allow employees to sit periodically. However, the claimant never gave the employer an opportunity to attempt to accommodate the claimant's needs because the claimant never requested any such accommodation. Finally, the claimant never indicated or announced an intention to quit unless her problem was corrected or reasonably accommodated.

Accordingly, the administrative law judge concludes that there is not a preponderance of the evidence that the claimant complies with the requirements to receive unemployment insurance benefits as a voluntary quit with good cause attributable employer due to an employment related illness or injury. There is also no evidence that the claimant has returned to the employer and offered to go back to work and, therefore, has not complied with the requirements for a non-employment related separation because of illness or injury. See 871 IAC 24.26(6)(a). The administrative law judge is not without sympathy for the claimant but is constrained to conclude that the claimant has not demonstrated by a preponderance of the evidence that she left her employment voluntarily with good cause attributable to the employer. Therefore, the administrative law judge concludes that the claimant left her employment without good cause attributable to the employer, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical

ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The administrative law judge concludes that the claimant has the burden to show that she is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead vs. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that she is and was, at material times hereto, able, available, and earnestly and actively seeking work. The claimant testified that she has placed no restrictions on her availability for work and is earnestly and actively seeking work by making two in-person job contacts each week. The claimant testified that she has placed a restriction on her ability to work only for a position that does not involve prolonged standing such as typing, using a computer, or a cashier where sitting is possible. The administrative law judge concludes that this restriction does not unreasonably impede the claimant's opportunity for employment. Accordingly, the administrative law judge concludes that the claimant is able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits for that reason. However, as noted above, the administrative law judge concludes that the claimant is disqualified to receive unemployment insurance benefits because she left her employment voluntarily without good cause attributable to the employer.

DECISION:

The representative's decision of July 20, 2004, reference 01, is affirmed. The claimant, Deanne M. Heaton, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer. The claimant is able, available, and earnestly and actively seeking work.

tjc/b