IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

CHRISTINA L NIELSEN Claimant **PRESTAGE FOODS OF IOWA LLC** Employer	**APPEAL NO. 21A-UI-02515-JT-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/20/20** **Claimant: Appellant (1)**

Iowa Code Section 96.5(1)(d) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 23, 2020, reference 05, decision that disqualified the claimant for benefits and that stated the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on July 16, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on March 5, 2021. The claimant participated. The employer representative, Sarah Adams, was not available at the registered number and did not participate. Exhibit A was received into evidence.

ISSUE:

Whether the claimant voluntary quit 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, Christina Nielsen, was employed by Prestage Foods of Iowa, L.L.C., as a full-time hog production worker during two distinct periods. The claimant estimates the most recent period of employment began in March 2020. The claimant last performed work for the employer on or about July 20, 2020. The claimant's usual work hours were 7:00 a.m. to 5:30 p.m., Monday through Friday. The claimant's job was to gut hogs by pulling out their intestines. The hog intestines would sometimes be sticky and difficult to remove. In that situation, the claimant would have to use increased pulling effort to remove the intestines.

From about June 11, 2020 through July 12, 2020, the claimant was off work due to illness that her health care provider suspected was COVID-19. The claimant went to the emergency room on or about June 11, 2020 and was tested for COVID-19. The test yielded a negative result. The provider advised the claimant that false negatives were common, concluded that the claimant likely had COVID-19, and advised the claimant to quarantine. The claimant returned to the employment on July 13, 2020. The claimant provided the employer with two medical notes to cover her absences. The first was from the medical provider who initially evaluated the claimant. The second was from a different provider who released the claimant to return work. On July 13, 2020, the employer compelled the claimant to go off work until she could provide

proof that the two medical excuse/documents pertained to a single ongoing illness. The claimant subsequently provided documentation that was acceptable to the employer and return to the employment on July 16, 2020.

The claimant was disturbed by the employer's request for additional documentation to support her month-long absence and by the employer's decision not to compensate her for the time she was off work. The employer had in place a policy of compensated employees who missed work due to the need to quarantine while waiting for COVID-19 test results and who missed work due to the need to quarantine after testing positive for COVID-19. The policy also allowed compensation where a member of the employees household had test positive and the employee was advised to quarantine. The employer concluded the claimant's circumstances, which included the negative COVID-19 test, did not meet the requirements and the claimant would not be compensated.

On July 21, 2020, the clamant experienced back pain at work after having to exert extra effort to remove a hog intestine. The claimant went to the company nurse. The nurse discounted the claimant's concern by telling the claimant that back pain was common and that it would go away. The claimant went to the doctor and was diagnosed with degenerative disc disease. The doctor released the claimant to return to the employment effective July 23, 2020. The claimant elected not to return to the employment. The claimant elected not to return to the employment in part because she believed she had exceeded the maximum allowed attendance points and that she would be discharged for attendance upon her return to the employment. The employer had not notified the claimant of a discharge. On July 27, 2020, the claimant notified the employer she would not be returning to the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(d) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

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).

Iowa Admin. Code r. 871-24.25(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.,* 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. To the extent that the claimant's back issue factored in the quit, the claimant's quit was not based on advice from a licensed and practicing physician. On the contrary, the evaluating physician released the claimant to return to work without restrictions. The claimant's circumstances of being off work between June 11 and July 12 did not meet the employer's announced criteria for COVID-19 based compensation. Accordingly, the employer's decision not to compensate the claimant for her time off work did not create an intolerable or detrimental working condition. The claimant's decision to preempt a discharge for attendance by not

returning to work did not make the claimant's voluntary quit for good cause attributable to the employer. The employer had not notified the claimant of a discharge. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The December 23, 2020, reference 05, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective July 23, 2020, when the claimant was released to return to work but elected not to return. The claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

March 16, 2021
Decision Dated and Mailed

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NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to https://www.iowaworkforcedevelopment.gov/pua-information. **If you do not apply for and are not approved for PUA for the affected period, you may be required to repay any benefits you have received.**