

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEANNA GABRIEL
Claimant

APPEAL NO. 06A-UI-10257-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS DAIRY INC
Employer

**OC: 09/17/06 R: 01
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Deanna Gabriel (claimant) appealed an unemployment insurance decision dated October 16, 2006, reference 02, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Wells Dairy, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 6, 2006. The claimant participated in the hearing. The employer participated through Wendy Lee, Organizational Capability Generalist. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time floor cleaner from August 22, 2005 through December 30, 2005. She sustained a work-related injury to her hand on approximately November 4, 2006 for which she was receiving ongoing treatment. The claimant was placed on light duty, but those restrictions were lifted during the first part of December. She gave notice near that same time but worked until the end of December 2005. The claimant quit her employment because the work bothered her hand, even though she was not advised to do so by her physician.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by giving the employer notice that she was quitting her employment. She quit because the work bothered her hand and she was going to return to a different employer.

A voluntary quit based on illness is clearly disqualifying except upon the advice of a licensed and practicing physician. Taylor v. Iowa Department of Job Service, 362 N.W.2d 534 (Iowa 1985). However, where illness or disease directly connected to the employment makes it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). In the case herein, the claimant's continued employment was not detrimental to her health. In fact, she had been released without restrictions near the same time that she opted to quit.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

DECISION:

The unemployment insurance decision dated October 16, 2006, reference 02, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw