

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER L HOEN
Claimant

“CO-LINE WELDING INC
Employer

APPEAL 20A-UI-13152-DZ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/24/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jennifer L Hoen, the claimant/appellant, filed an appeal from the October 16, 2020, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 21, 2020. The claimant participated and testified. The claimant was represented by Harley C Erbe, attorney. The employer participated through Fave Brand, co-owner and Chad Sailors, human resources manager. Claimant’s Exhibits A through D were admitted into evidence.

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: The claimant began working for the employer on February 10, 2020 as a full-time probationary welder. Her probationary period was 60 days and during this time the claimant was not eligible for Family Medical Leave Act (FMLA) leave, short-term disability leave or long-term disability leave. Her last day at work was March 13, 2020.

On February 17, the claimant was welding at work and her body was in an unusual position because of her height and job task at hand. The claimant felt a pop in her back and felt pain. The claimant told Dan Schutte (Schutte), her supervisor, about the pop and her pain. The claimant returned to work the next day but was still in pain. The claimant saw a doctor at Iowa Ortho on February 21 who told her that she had a back fracture and bulging disks in her back. The claimant saw the medical provider at Iowa Ortho again on February 26 and February 28. On March 2, the claimant told the employer what her injuries were and informed the employer that surgery was scheduled for March 13. The employer told the claimant that she would continue to have her job when she returned from surgery and that the claimant would have to restart her 60-day probationary period.

On March 17, the claimant had spinal fusion surgery. On April 16, the claimant's doctor informed the claimant that she was not yet released to return to work. Claimant's Exhibit A.

On April 17, the claimant offered to return to work. The employer refused the offer and told the claimant that because of the COVID-19 pandemic the employer was not hiring any new employees. The employer also told the claimant that she could re-apply for a position with the employer when she was released by a doctor to return to full duty. The claimant contacted the employer again on May 5, 2020. Again, the employer told the claimant that the employer required a doctor's note releasing her to full duty before they would consider re-hiring her.

On May 14, 2020, the claimant's doctor released her to return to modified work but with no firm anticipated date of return to full duty. Claimant's Exhibit C. Claimant was restricted to lifting no more than 10 pounds and was restricted from respective lifting, pulling, bending, twisting and climbing. The claimant never requested to see the employer's worker's compensation doctor.

On June 3, the claimant texted Schutte about the employer rehiring her and told Schutte that she was "...fighting like crazy to get any and all restrictions lifted June 11th." Schutte responded that "...once [the claimant's] restrictions were lifted [she] had a job again" and told the claimant that he would get back to her after he spoke with Brand. Schutte spoke with Brand who told him that the claimant could re-apply when she was released by a doctor to full duty.

The claimant has had persistent back pain for at least ten years. Claimant's Exhibit B. Prior to her employment with the employer, the claimant had worked as a Certified Nursing Assistant (CNA). In that job she did a lot of bending, lifting, and twisting.

On June 11, the claimant's doctor changed her weight restriction to 50 pounds. The claimant didn't inform the employer because the claimant knew that she couldn't return to work for the employer unless she had no restrictions. The claimant's doctor has not yet released her to return to full duty.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code section 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.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Empl. Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

In this case, the claimant's injury was not caused her employment with this employer. The claimant's own evidence, in Claimant's Exhibit B, shows that the onset of back pain was over ten years ago. In addition, the fact that the claimant did not ask to see the employer's worker's compensation doctor is strong evidence that the claimant's injury was not caused by her employment with this employer. The claimant's longstanding back injury was aggravated by her employment with this employer. The claimant did obtain the advice of a licensed and practicing physician and offered to return to work. However, the claimant has not yet received a release to return to full duty so that she could perform all of the duties of the job. The employer told the claimant multiple times and testified that work would be available for her, should she be rehired, as soon as she is released by a doctor to full duty.

The claimant has not established that she has fully recovered and can return to full duty, as is her burden. While the claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The October 16, 2020, (reference 02) unemployment insurance decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Daniel Zeno
Administrative Law Judge

January 13, 2021
Decision Dated and Mailed

dz/mh