

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNN R WEY
Claimant

APPEAL NO. 17A-UI-00094-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINDSTREAM CORPORATION
Employer

OC: 12/04/16
Claimant: Appellant (5)

Iowa Code Section 96.5(1) – Voluntary Quit

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Lynn Wey filed an appeal from the December 23, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Wey had voluntarily quit on October 20, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 25, 2017. Ms. Wey participated. The employer provided written notice that the employer waived participation in the appeal hearing. The administrative law judge took official notice of the agency's administrative record of Ms. Wey's weekly claims and received Exhibits A through F into evidence.

ISSUES:

Whether Ms. Wey's voluntary quit was for good cause attributable to the employer.

Whether Ms. Wey has been able to work and available for work since she established her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lynn Wey was employed by Windstream Corporation as a full-time Customer Care Specialist from February 2016 until October 20, 2016, when she voluntarily quit. Ms. Wey's immediate supervisor toward the end of the employment was Miranda Johnston. At the time Ms. Wey accepted the employment, she understood that the employment would involve handling inbound customer service calls and customers' concerns. At the time Ms. Wey accepted the employment, she understood that the work would involve working by telephone and computer in a computer cubicle environment. After Ms. Wey completed weeks of training, her work scheduled became 10:00 a.m. to 7:00 p.m., Monday through Saturday. The work scheduled subsequently became Monday through Friday. Ms. Wey was not guaranteed a 7:00 p.m. quit time. Instead, Ms. Wey would have to remain at work until the inbound customer cue was cleared. During her shift, Ms. Wey would receive an hour lunch break and two 10 to 15 minute

additional breaks. One of those breaks came before lunch and the other came after. The timing of those smaller breaks fluctuated. Ms. Wey found the fluctuating time of the smaller breaks stressful and unsettling. The employer allowed Ms. Wey to use the restroom and/or get a drink as necessary outside the scheduled breaks.

Ms. Wey suffers from neuropathy. Ms. Wey was off work July 18-31, 2016, in connection with what her doctor termed dysesthesia and fatigue. During that period, Ms. Wey's primary care physician referred her for evaluation at Mayo Clinic.

On October 20, 2016, Ms. Wey notified Ms. Johnston that she was quitting and that her quit would be effective immediately. Ms. Wey had been experiencing stress-related nausea at work. Ms. Wey and her doctor had discussed the idea of Ms. Wey finding different employment, but her doctor had left that decision to Ms. Wey's discretion. Ms. Johnston considered Ms. Wey a valued employee and did not want Ms. Wey to leave the employment. Ms. Johnston was interested in finding a way for Ms. Wey to continue in the employment. Ms. Wey asked the employer to adjust her work hours to earlier in the day by providing an 8:00 a.m. to 3:00 p.m. or 9:00 a.m. to 4:00 p.m. work day. The employer utilizes a bidding system to assign work hours according to work performance. Ms. Wey and the employer anticipated that the next bidding process would take place a month or two in the future. While Ms. Wey's performance was satisfactory, that did not guarantee that she would be able to bid into a work assignment that would provide the work hours she desired. The employer provided no such guarantee. Ms. Wey did not provide the employer with medical documentation to support her request for changed hours or to support her decision to separate from the employment.

Early in October 2016, the employer has issued a "final" warning to Ms. Wey for attendance. The warning was based on an absence that occurred in early October. Under the employer's attendance policy, Ms. Wey was subject to being discharged from the employment if she reached eight attendance points. Ms. Wey was at 6.75 or 7.0 attendance points at the time she voluntarily quit. The employer continued to have the same work available for Ms. Wey at the time Ms. Wey quit the employment.

Ms. Wey established a claim for unemployment insurance benefits that was effective December 4, 2016. Ms. Wey delayed filing the claim under the belief that her voluntary quit would disqualify her for unemployment insurance benefits. Between her October 20, 2016 quit and the filing of the claim, Ms. Wey looked for additional employment and obtained additional employment through QPS, a staffing agency. For the three weeks that led up to December 7, 2016, Ms. Wey worked in a full-time, temp-to-hire work assignment. The assignment duties and work hours were remarkably similar to the duties and work hours at Windstream. However, Ms. Wey was allowed to leave the temporary work assignment at 7:00 p.m. without the need to clear the cue before she departed for the day. The QPS assignment ended on December 7, 2016. Ms. Wey then made contact with another staffing agency and that staffing agency advised Ms. Wey that she should apply for unemployment insurance benefits.

Since Ms. Wey established her claim for benefits, she has consistently made two or more job contacts per week. Since she established her claim, she has not had any medical restrictions that prevent her from performing full-time work. Ms. Wey has not discussed with her doctor what types of work fit best with her chronic neuropathy or which types of work she should avoid. Ms. Wey lives in Lynnvile and has applied for work as far away as Des Moines. Ms. Wey has a reliability vehicle and is willing to commute to Newton, Pella, Grinnell or Des Moines for work or to search for work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Workforce Development rule 817 IAC 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). 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. See 871 IAC 24.25.

The weight of the evidence in the record establishes a voluntary quit that was without good cause attributable to the employer. Ms. Wey presented insufficient evidence to establish that

her decision to quit the Windstream employment was actually upon the advice of a licensed and practicing physician. Ms. Wey presented no such medical documentation to the employer or to Workforce Development. Likewise, Ms. Wey presented insufficient evidence to establish that her request for earlier work hours was a medically necessary reasonable accommodation based on advice from her physician. The weight of the evidence fails to establish that it was medically necessary for Ms. Wey to leave the employment at Windstream. The administrative law judge appreciates Ms. Wey's testimony regarding the stress inherent in the employment. However, the evidence in the record did not establish an excessively stressful work environment that would make it medically necessary for Ms. Wey to separate from the employment. The evidence established that the employer had a reasonable break policy.

Because the administrative law judge concludes that Ms. Wey's voluntary quit was without good cause attributable to the employer, Ms. Wey is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Wey must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

Iowa Code § 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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The evidence in the record establishes that Ms. Wey has been able to work, available for work, and actively and earnestly engaged in a search for new employment since she established her unemployment insurance claim. If the separation from Windstream had not disqualified Ms. Wey for benefits, she would have been eligible for benefits, provided she met all other eligibility requirements.

DECISION:

The December 23, 2016, reference 01, is modified as follows. The claimant voluntarily quit the employment on October 20, 2016 without good cause attributable to the employer. Based on the voluntary quit, the claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged. The claimant has been able to work, available for work, and actively and earnestly engaged in a search for new employment since she established her unemployment insurance claim.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs