

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DELORES A CRISP

Claimant

APPEAL NO. 11A-UI-06975-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM

Employer

OC: 04/24/11

Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 19, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 14, 2011, in Davenport, Iowa. Claimant participated. The claimant was represented by John Graupmann. Employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Delores Crisp and Claimant's Exhibits A-E.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and
Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired on August 4, 2009, as a full-time information and release clerk. The claimant was involved in a serious automobile accident on May 15, 2007. She injured her right leg. The claimant has hardware in her right leg. The employer knew about the claimant's right leg condition when the claimant was hired.

The claimant's job required her to be on her feet and walk. As a result, her right leg became increasingly swollen and painful. The claimant went to see her physician, Tuvi Mendel, M.D., on April 8, 2011. Dr. Mendel suggested that she work part-time for a while in order to allow her leg to recover. The claimant asked her employer about part time work. She was informed that part-time work was not available. The claimant was then told by Betsy Tibbets, director, and Mary Hirst, manager, that she should resign her position. The claimant did not want to resign her position. She loved her job. The claimant was told that unless she resigned, she would never be able to return to work for the employer. The claimant felt she had no option but to resign. She submitted a letter of resignation dated April 12, 2011. She gave two weeks' notice with her last date of work being April 25, 2011. (Exhibit A)

The claimant is 58 years old and has an associates' degree. She is looking for full-time and part-time work as a receptionist or administrative assistant. She is actively applying for work. She believes that she can work full time if the position is primarily a sit-down position.

REASONING AND CONCLUSIONS OF LAW:

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.

One of the most difficult issues in unemployment insurance law is eligibility for unemployment insurance benefits when there has been a medically related separation of employment. When an individual voluntarily quits his or her employment without good cause attributable to the employer, then benefits are not awarded. The analysis focuses on which party initiated the separation of employment. If the claimant initiates the separation of employment, then no benefits are awarded unless good cause is attributable to the employer. When an individual leaves his or her employment for medical reasons, the analysis is more nuanced and requires special attention to the reasons for the resignation.

The evidence in this case is uncontroverted that the claimant's physician recommended that she go to part-time employment with the employer in order to rest her right leg and avoid all the walking associated with her job. The walking was increasing her pain and swelling. The claimant approached the employer and was told that no part-time jobs were available. The claimant testified that the employer told her to resign. The employer recommended resignation so that the claimant could preserve her opportunity to work for the employer in the future. The claimant did not want to resign and did so with great reluctance because she loved her job. The employer, in effect, initiated the separation of employment.

The administrative law judge has carefully reviewed all of the administrative rules and concludes that most applicable is 871 IAC 24.26(6)b. Although the claimant's right leg condition was not

caused by the employment, "factors and circumstances directly connected with employment" aggravated the claimant's condition and "made it impossible for the employee to continue in employment because of serious danger to the employee's health...." The rule goes on to state that if these circumstances are present, the law deems the separation to be an involuntary termination of employment and constitutes good cause attributable to the employer. Since the claimant was unable to work for the employer because part-time work was not available even on a temporary basis, her separation is deemed involuntary. Benefits are allowed.

The next issue is whether the claimant is able and available for employment.

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 evidence established that the claimant is actively looking for work. She is looking for both full-time and part-time work as a receptionist or administrative assistant. The claimant believes that she could work full time if she was able to sit and limit her walking. She is 58 years old and has an associate's degree. She has experience as a clerk; receptionist; typist; and administrative assistant. The claimant is, therefore, able and available for work.

DECISION:

The decision of the representative dated May 19, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs