IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BEVERLY A ALLEN
Claimant

QWEST CORPORATION
Employer

APPEAL NO. 08A-UI-11683-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/26/08 R: 02
Claimant: Respondent (1)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.26(4) – Intolerable Working Conditions

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 5, 2008, reference 02, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on December 30, 2008. Claimant participated with Tonya Oetken. Employer participated through Anne Rodriguez and Todd Welch and was represented by Steven Zaks of Barnett Associates Inc.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a customer service sales person and was employed from November 12, 2007 until October 28, 2008, when she quit. She was injured at work on November 30, 2007 and the workers' compensation carrier referred her to a Dr. Kirk, who opined the injury was work related and set medical restrictions in December 2007 of no more than four hours of mouse and keyboard work per day. Employer honored that restriction and most recently on September 30, 2008 Jacqueline Stoken, D.O., an independent medical examiner (IME) opined:

> Based on Ms. Allen's job duties, she is able to perform functions of her job with the restriction of avoiding prolonged looking down and being able to sit or stand as tolerated. She should be able to take a five-minute break hourly to do her stretching program. Ms. Allen should be gradually introduced to full time at her job with working 6 hours/day for 1 – 2 weeks then 8 hours/day.

She was scheduled under those restrictions for one day and then was scheduled for eight hour shifts and mandatory overtime, and the employer did not allow her time for the exercises but would only offset time against her regular breaks. She told Welch on September 30 and again

on October 9 that her restrictions were being violated and it was causing her physical pain, a need to increase medication amounts, and to use ice packs and heating pads. He told her in response that she had to work the schedule and employer was meeting the restrictions by having adjusted her desk so her feet were on the floor and the screen was at eye level. She was required to work mandatory overtime on October 20, 21, and 27, 2008 and she complained to Welch about being in pain. The workers' compensation carrier representative denied her request to see the doctor again.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

Iowa Code § 96.5-1 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.

871 IAC 24.26(4) 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:
>
> (4) The claimant left due to intolerable or detrimental working conditions.

871 IAC 24.26(2) 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:
>
> (2) The claimant left due to unsafe working conditions.

Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005).

The employer's refusal or failure to abide by the medical restrictions of allowing a five-minute break every hour without offsetting the time from her other breaks, requiring mandatory overtime, and the workers' compensation carrier not approving another visit with the doctor

when she continued to experience pain at work under the employer's interpretation of the restrictions, created an intolerable work environment for claimant, which gave rise to a good-cause reason for leaving the employment. Benefits are allowed.

DECISION:

The December 5, 2008, reference 02, decision is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw