

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ASHLEY P BUSH**

Claimant

**APPEAL NO. 07A-UI-03472-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HUBBARD CARE CENTER INC**

Employer

**OC: 03/04/07 R: 02  
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Ashley Bush filed an appeal from a representative's decision dated March 26, 2007, reference 02, which denied benefits based on her separation from Hubbard Care Center, Inc. After due notice was issued, a hearing was held by telephone on April 25, 2007. Ms. Bush participated personally and was represented by Nathaniel Boulton, Attorney at Law, who offered additional testimony from Gloria Venz. Exhibits A, B, and C were admitted on Ms. Bush's behalf. The employer participated by Angela Kuda-Bruns, Administrator; Mary Knutson, Director of Nursing; and Tera Last, Charge Nurse. Exhibits One through Ten were admitted on the employer's behalf. The hearing recessed and resumed on April 27, 2007. With the exception of Tera Last, the same parties again participated.

**ISSUE:**

At issue in this matter is whether Ms. Bush was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Bush began working for Hubbard Care Center, Inc., on November 16, 2006 as a full-time certified nursing assistant. She sustained a work-related injury on January 23, 2007. When she returned to work on February 5, the employer met with her and provided a list of duties it was felt she could perform given her medical condition. The list had been reviewed with her physical therapist before it was given to Ms. Bush. The therapist felt the duties were within her capabilities. Ms. Bush indicated she did not have any concerns at the time and would attempt to perform the assigned duties.

Ms. Bush worked on February 5 and notified the employer on February 6 that she had severe pain. The employer made an appointment for her to be seen by the doctor on February 7. She was not required to complete her shift on February 6. The doctor released her on February 7 to return to light-duty work. Ms. Bush next worked on February 9. She was assigned work shredding papers, answering call lights, and completing a residents' survey. None of these tasks caused her pain. When she reported to work on February 10, she was told she was

needed to work on the Alzheimer's unit for 1.5 hours. Her only duties would be monitoring residents and passing snacks. Ms. Bush did not know what specific duties would have been required of her in order to pass snacks.

Shortly after receiving her assignment on February 10, Ms. Bush notified the charge nurse that she was quitting because her boyfriend did not want her working there. She felt the tasks she would be required to perform on February 10 were inconsistent with her limitations. She did not contact either the director of nursing or the administrator to complain that she felt her doctor's orders were being violated or that the work was causing her pain. Neither was in the building at the time but Ms. Bush had previously contacted the administrator at home when the administrator was off duty. Ms. Bush was in the facility to receive therapy on February 12. The administrator suggested she speak with the director of nursing about returning to the employment. Ms. Bush did not do so. She felt the employer was more concerned with the restrictions placed by the doctor than what she felt capable of performing. Continued work would have been available if she had not quit.

### **REASONING AND CONCLUSIONS OF LAW:**

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Bush quit because she felt the employer was not accommodating her medical condition. The employer spoke with her physical therapist before giving Ms. Bush a list of duties she was to perform while on light duty. Although a doctor had not signed off on the list, it was reasonable for the employer to believe the therapist would be in a position to know the limits of what she could perform. Ms. Bush worked on February 5 and then complained of severe pain as a result of work performed on that date. The employer immediately made arrangements for follow-up medical care. The employer was not made aware of any additional accommodations that were needed. The employer assigned her to desk work on February 9, the next day she worked, because such work was available.

Ms. Bush did not make a good-faith attempt to work on February 10. One of her duties for that shift would have been simply to monitor residents, a task that would not have required any exertion that might aggravate her condition. Her other task would have been to serve treats. Without knowing what treats were to be served, Ms. Bush could not have known whether the activity would cause pain. She decided to leave without first finding out what specific tasks would be required in passing snacks. The claimant told the employer her boyfriend wanted her to quit.

An individual who leaves employment because of a medical condition caused or aggravated by the employment must first put the employer on notice of the problem and must advise the employer that she intends to quit if the problem is not corrected or if she is not reasonably accommodated. Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993); Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Ms. Bush did not give the employer a reasonable opportunity to resolve the issue that was causing her to quit. She had recourse to both the director of nursing and the administrator but did not speak with either before quitting. She could have called the administrator at home on February 10, as she had done on at least one occasion in the past. She could have called the director of nursing at home on February 10. Alternatively, she could have spoken with the director of nursing, as suggested by the administrator, while she was in the building on February 12. Ms. Bush did not make management aware of her concerns and her intention to quit. Therefore, she deprived the employer of the opportunity to try to find more compatible work.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Ms. Bush's quit was not for good cause attributable to the employer, as the employer was not given a fair opportunity to try to salvage the employment relationship. Accordingly, benefits are denied.

**DECISION:**

The representative's decision dated March 26, 2007, reference 02, is hereby affirmed. Ms. Bush voluntarily quit her employment for no 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 job insurance benefit amount, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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