

evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer on May 28, 2005. She worked full time as a laundry finisher in the employer's dry-cleaning and laundry business. Her primary job duty was pressing shirts. Her last day of work was August 18, 2005.

The claimant had previously had some constricted breathing episodes while working at the employer. On July 25, 2005 she had a severe episode, resulting in her going to the hospital. She had some tests done on August 3, 2005. She continued to report for work, although there were days she was released early due to breathing problems. The episodes occurred both while at work and while away from work. On August 19, 2005 she brought in a note from her doctor indicating that tests were performed that "validates her medical condition which requires her to be away from her laundry department station." The medical condition that the doctor was presumed to be confirming was asthma. The doctor's note did not indicate what functions the claimant might be able to do, nor did it indicate what about the claimant's job duties might cause or aggravate her condition, nor did it indicate what accommodations the employer might make to alleviate the situation.

When the claimant gave the doctor's note to the employer, the employer interpreted the submission as an indication that the claimant was being required to quit her position. The claimant denied that she wished to quit, but asked to be placed into some other position in the business. At that time, the employer did not have any other available positions in the business.

After the end of the claimant's employment, she continued to suffer constricted breathing episodes, at times to the degree that she had to have assistance returning home from a store a block from her home. She has sought further diagnosis from another doctor at the University of Iowa Hospitals. That doctor gave the claimant a note dated October 12, 2005 indicating that she was to be off work for the indefinite future but at least through October 19, 2005 to allow for further testing and additional diagnosis and determination of causation. That doctor disagrees with the initial doctor's diagnosis that the medical condition is asthma.

REASONING AND CONCLUSIONS OF LAW:

The primary issue in this case is whether the claimant voluntarily quit, and if so, whether it was for 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)(36) 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.

(36) The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

Iowa Code Section 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 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.

While the claimant did not subjectively wish to quit, she was informing the employer that she would not or could not continue to work in her regular job. Unless there has been a showing by competent evidence that the medical condition was caused or aggravated by the employment conditions, the employer is not compelled to provide accommodations such as finding other work for the claimant within the business. The claimant has not made such a showing; in fact, a determination as to the diagnosis and the causation is clearly still in question. By reporting that she either would not or could not continue working in her prior position without the necessary further showings, it was the claimant's action that resulted in the end of her employment. Accordingly, the separation is a voluntary quit without good cause attributable to the employer and benefits must be denied until such time as she has fully recovered and sought to return to work with the employer but that work is not available, or until she has requalified by earning ten times her weekly benefit amount.

The next issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

Iowa Code Section 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".

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

The claimant is currently under a doctor's care and has not been released to return to work. Benefits are denied until such time as she has been released to return to work, if she is then otherwise eligible.

DECISION:

The representative's September 9, 2005 decision (reference 01) is modified with no effect on the parties. The claimant voluntarily left her employment without good cause attributable to the employer. As of August 19, 2005, benefits are withheld until such time as the claimant has recovered and sought to return to work, or until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She is currently not able and available for work.

ld/s