

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLENE M FISHER**  
Claimant

**APPEAL NO: 07A-UI-02019-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AREA SUBSTANCE ABUSE COUNCIL INC**  
Employer

**OC: 01/28/07 R: 03**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 19, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 14, 2007. Claimant participated. Employer participated through John Garringer, Linda Turo and Hai Trinh.

**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 was employed as a full time residential treatment counselor from December 6, 2003 until January 29, 2007 when she quit. Her supervisor since November 2005, Trinh had given a disciplinary corrective action notice on January 12 and claimant gave her notice a week later. Upper management agreed with Trinh and told claimant that she “needed to work it out with her.” Claimant is legally blind and struggles with documentation. She had accommodation by machines set up from the department for the blind. She believed she had more scrutiny from Trinh than from prior supervisors as Trinh had issued one verbal and one written disciplinary notice and a one-day suspension plus the January 12, 2007 memo. Trinh did not work the same shift but was there at various times when claimant was working. Claimant was under the care of her family physician Vandenbosh who said her job was too stressful and she needed to find something else. She delayed because she wanted to “stick it out” and she “loved her job” but ultimately followed her physician’s advice.

**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.

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.

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.

Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. *Shontz v. IESC*, 248 N.W.2d 88 (Iowa 1976). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason

is involuntary and for good cause attributable to the employer *even if the employer is free from all negligence or wrongdoing*. *Raffety v. IESC*, 76 N.W.2d 787 (Iowa 1956) (emphasis supplied).

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must generally first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. *Suluki v. Employment Appeal Board*, 503 N.W.2d 402 (Iowa 1993). However, claimant was not required to give notice of intention to quit due to an intolerable, detrimental or unsafe working environment. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Since her physician advised her to quit, even if the employer was not at fault, claimant is qualified for benefits. Benefits are allowed.

**DECISION:**

The February 19, 2007, reference 01, decision is reversed. 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/pjs