IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CHRISTINE F TIBESAR
Claimant

MERCY MEDICAL CENTER
Employer

APPEAL NO. 10A-UI-14976-VST

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/26/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 21, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 9, 2010. Claimant participated. Although the employer provided the name of a representative and a telephone number, when that number was dialed, voice mail picked up. A detailed message was left with the employer on how to participate in the hearing. The employer did not call during the hearing. The record consists of the testimony of Christine Tibesar.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

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 employed as a registered nurse by the employer. She first began working for the employer in April 1981. In September 2009, the claimant had to reduce the number of hours that she was working due to personal illness. She worked then worked part time through April 30, 2010. At that time her physician advised her to remain off work entirely. The claimant was hospitalized on May 3, 2010, as part of her treatment.

The claimant was given Family Medical Leave Act (FMLA) leave in September 2009. She also received two thirty-day extensions from the employer. On July 8, 2010, the claimant was advised that her leave would expire on August 19, 2010. The claimant submitted her written resignation on August 2, 2010. She did not want a termination on her record. The claimant's resignation was effective August 19, 2010. She was not able to return to work at that time. The claimant did not receive a release to return to work until September 30, 2010.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 24.25(35) 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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence established that it was the claimant who initiated the separation of employment. The claimant had been off work on a voluntary leave of absence due to illness that was not work related. The employer gave the claimant FMLA leave plus two thirty-day extensions. The claimant was informed that if she was unable to return to work by August 19, 2010, she would be terminated. The claimant knew that she could not return to work and elected to submit her resignation. The claimant felt that she was compelled to resign. She did not want a termination on her record.

There was no evidence that the claimant was being terminated for misconduct. The employer's use of the word termination was in conjunction with the claimant's inability to return to work for personal reasons. The claimant read into the record the letter she received from the employer relative to her ongoing employment. The employer was informing the claimant that the position needed to be filled and that the claimant had to return to work by August 19, 2010. The employer was, in essence, advising the claimant that her voluntary leave of absence was at an

end. The employer provided the claimant with FMLA leave plus additional leave above and beyond that required under FMLA.

The claimant testified that she was physically unable to return to work and that she did submit a written resignation. She did not attempt to return to work until after she was given a full release by her physician on September 30, 2010. She resigned on August 19, 2010. The claimant's employment came to an end because she was physically incapable of returning to work at the time her leave expired. Under these circumstances, the claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The decision of the representative dated October 21, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck
Administrative Law Judge

_____
Decision Dated and Mailed

vls/css