

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SERINA M NATALINO-SPENCER
Claimant

KRAFT HEINZ FOODS LLC
Employer

APPEAL NO. 21A-UI-00595-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/16/20
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 13, 2020, reference 01, decision that disqualified the claimant for benefits and that stated the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on August 20, 2020 without good cause attributable to the employer and due to a non-work related illness or injury. After due notice was issued, a hearing was held on February 9, 2021. The claimant participated. The employer did not provide a telephone number for the appeal hearing and did not participate. Exhibits A and B were received into evidence.

The administrative law judge left the hearing record open until Friday, February 12, 2021, for the limited purpose of allowing the claimant to submit a copy of the medical note she delivered to the employer on August 13, 2020 and other relevant medical documentation. The claimant did not submit the requested documentation.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Kraft Heinz Foods Company, L.L.C. as a full-time production work. The claimant began the employment on July 15, 2020 and last performed work for the employer on August 13, 2020. The claimant worked a 12-hour shift that started at 5:00 p.m. and that ended at 5:30 a.m. The claimant worked a two-week schedule that included three shifts one week and four shifts the next. On or about August 10, 2020, the claimant slipped in the shower at home and suffered a left ankle sprain. The claimant initially did not think much about her injury. Following her ankle injury, the claimant worked one shift and a portion of another shift, but experienced intense pain as she performed her work duties. The claimant's duties required that she stand for extended periods. On August 13, 2020, the claimant went to the nurse's office during her shift and spoke with the nurse regarding her pain. The nurse asked the claimant whether the claimant could continue to stand on her ankle to perform her work duties to the end of the shift and the claimant indicated she could not. Based on the claimant's

statement that she could not perform her work duties, the nurse sent the claimant home for the remainder of the day.

On August 13, 2020, the claimant sought medical evaluation of her ankle at a walk-in clinic. The claimant's ankle was x-rayed. The medical provider diagnosed a possible ankle sprain and referred the claimant to an orthopedist. The claimant advises she was seen by the orthopedist the same day. This would be an unusually quick referral. The orthopedist reviewed the xrays and diagnosed a "high-level sprain" of a type usually associated with trauma or high impact sports. The orthopedist placed the claimant's leg in a cast and instructed the claimant to use crutches for a week. The claimant asserts the orthopedist released the claimant to return to light-duty work. However, this seems unlikely, given the diagnosis of a "high level sprain" and the directive to use crutches. The claimant would not be able to perform her production duties with or without reasonable accommodation, given her need to use crutches and her statement that the production floor could be slippery.

On August 13, 2020, the claimant took her medical release to the Kraft Heinz nurse. The administrative law judge requested that the claimant obtain a copy of the note she delivered to the employer and provided the claimant a reasonable opportunity to do so. The claimant has not provided a copy of the note or a reason she cannot provide a copy. On August 13, 2020, the claimant also spoke with a human resources representative who advised the claimant that the employer would review the medical note, but that the claimant's employment would likely be terminated in light of the claimant being unable to work on the production floor. The employer declined to move the claimant to a sedentary position. The claimant did not return to the employment.

A week later, the claimant returned to the orthopedist and was fitted with a shoe-like bottom to her cast so that she could walk while wearing the cast. The claimant remained unable to perform her regular work duties at Kraft Heinz without or without reasonable accommodation.

On August 21, 2020, after the claimant had been off work for a week, the claimant received a letter from the employer that stated the employment was terminated due to the claimant being unable to complete her probationary period. The letter invited the claimant to re-apply for work at a later date. After the contact with the employer on August 13, this letter was the only additional contact between the employer and the claimant.

The claimant advises that her cast was removed on or about August 31, 2020, that the claimant was fitted with a CAM boot, and the claimant commenced twice-weekly physical therapy sessions. The claimant was in the CAM boot for three or four weeks. On or about August 31, 2020, the claimant commenced the twice-weekly physical therapy sessions.

The claimant completed physical therapy on October 13, 2020. The claimant advises that the physical therapist cleared the claimant to return to work at that time without a follow-up appointment with the orthopedist.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(d) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Administrative Code rule 817-24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

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.

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 weight of the evidence in the record establishes that the claimant voluntarily quit the employment effective August 13, 2020 without good cause attributable to the employer and due to a non-work related injury that prevented her from continuing in the employment. Unfortunately, the claimant has not provided the requested copy of the medical note she states she presented to the employer on August 13, 2020. This deprived the administrative law judge the opportunity to review and further consider that note. The weight of the evidence establishes that the claimant was unable to continue in her regular work duties with or without reasonable accommodation. Though the claimant has not produced the note from the orthopedist that she

advises she delivered to the employer on August 13, 2020, the weight of the evidence indicates a quit based on advice from a licensed medical profession in the form of work restrictions. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits. Because the voluntary quit was based on a non-work related medical condition and upon the advice of a physician, the claimant may also requalify for benefits by recovering from her injury, having her recovery certified by a licensed and practicing physician, and returning to the employer to offer to perform services. If at that time no suitable, comparable work is available, the separation will become for good cause attributable to the employer, the claimant will become eligible for benefits, provided she meets all other eligibility requirements, and the employer's account will become subject to charge or benefits. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

DECISION:

The November 13, 2020, reference 01, decision is affirmed. The claimant voluntarily quit the employment effective August 13, 2020 without good cause attributable to the employer, upon the advice of a physician, and due to a non-work related injury. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits. The claimant may also requalify for benefits by recovering from her injury, having her recovery certified by a licensed and practicing physician, and returning to the employer to offer to perform services. If at that time no suitable, comparable work is available, the separation will be deemed to be for good cause attributable to the employer, the claimant will become eligible for benefits, provided she meets all other eligibility requirements, and the employer's account will become subject to charge or benefits. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.



James E. Timberland
Administrative Law Judge

February 26, 2021
Decision Dated and Mailed

jet/lj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you will be required to repay the benefits you have received.**