

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSA E. DOBBS

Claimant

APPEAL NO: 17A-UI-07214-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 06/18/17

Claimant: Appellant (1)

Iowa Code Section 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 10, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 3, 2017. The claimant participated in the hearing with witness/husband William Dobbs and a CTS Language Link Interpreter. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Claimant's Exhibits One and Two were admitted into evidence.

ISSUE: The issue is whether the claimant voluntarily left her position due to a non-work related injury or illness.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Swift Pork Company from September 11, 2010 to June 19, 2017. She was experiencing neck pain and decided to pursue a workers' compensation claim. She was examined by her primary care physician and he placed her on light duty for a period of time with the only restriction being she could not work more than eight hours per shift, but that restriction expired and the claimant returned to working without restrictions (Claimant's Exhibit B). Her primary care physician did not believe the claimant's condition was work-related but referred her to a neurologist who determined the claimant was suffering from myofascial neck pain (Claimant's Exhibit B). That neurologist also determined her condition was not work-related (Claimant's Exhibit B). The claimant sought a second opinion from another neurologist and the second neurologist also determined the claimant's pain was not due to a work-related injury. The neurologists agreed the claimant was going through degenerative changes that are normal and anticipated as part of the natural aging process (Claimant's Exhibit B). She was working full-time without restrictions at the time of the separation. The claimant grew frustrated and hired a workers' compensation attorney who sent her to another neurologist. That neurologist stated her condition might be work-related but he could not tell without further testing which was never done because the claimant entered a Settlement Agreement and Release with the employer June 20, 2017 (Claimant's Exhibit A).

That agreement paid the claimant the sum of \$40,000.00 in return for settlement of all claims the claimant had or could have brought, including the workers' compensation benefits, against the employer (Claimant's Exhibit A). The claimant signed the agreement June 20, 2017 (Claimant's Exhibit A).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was separated from her employment without good cause attributable to the employer.

Iowa Code § 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 Admin. Code r. 871-24.25(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.

While there is no Iowa case law on point, other states have addressed the situation of a voluntary quit in the context of a workers' compensation settlement. In *Edward v Sentinel*

Management Co., 611 N.W.2d 366 (Minn. App. 2000), the claimant resigned as part of a workers' compensation settlement package. The Minnesota court denied benefits, noting that the claimant could have continued working while pursuing his claim. The evidence in the case established that the claimant could still perform his work and was doing so while the negotiations continued. The Minnesota court found the situation analogous to a person negotiating for early retirement while work was still available. In *Larson v. Michigan Employment Sec. Com'n*, 140 N.W.2d 777 (Michigan App. 1966), the Michigan court allowed benefits to a severely injured worker who could not perform his former duties and for whom the alternatives were remaining employed with no income or resigning in order to receive income. Iowa administrative law judges follow these lines of analysis and make similar distinctions.

The evidence in the case at hand establishes that the claimant continued to be able to perform work for the employer while pursuing her workers' compensation claim, but voluntarily quit as part of the workers' compensation settlement. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant voluntarily quit the employment without good cause attributable to the employer. Accordingly, she is disqualified for benefits 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.

DECISION:

The July 10, 2017, reference 01, decision is affirmed. The claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn