

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NIKKI LUNDEN
Claimant

APPEAL NO: 11A-UI-14274-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NATURE CARE COMPANY
QUALITY CARE**
Employer

**OC: 09/18/11
Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Nikki Lunden (claimant) appealed an unemployment insurance decision dated October 19, 2011, reference 02, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Quality Care (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 28, 2011. The claimant participated in the hearing. The employer participated through Kimberly Leeney, human resources director. Employer's Exhibit One was admitted into evidence. Based on the 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.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time seasonal general laborer working in the landscaping part of the business from April 4, 2011 through September 12, 2011. She sustained a work-related shoulder injury on June 2, 2011 and was placed on light-duty restrictions for her shoulder sprain. The claimant worked until June 27, 2011, when the employer sent her home due to the claimant's complaint that her shoulder was "killing" her. The employer advised her that she needed to return to the physician. She never returned to work after that date. On June 28, 2011, the physician modified the claimant's work restrictions over the telephone. She was placed on stringent work restrictions that the employer could not accommodate so the claimant was off work receiving worker's compensation benefits.

The claimant told the employer she wanted to return to work on July 12, 2011, but the employer had to have a work release. The physician noted in a medical record dated July 12, 2011 that the claimant should have had resolution of her overuse injury, and, if not, something else in her

personal life was affecting it. The claimant plays the guitar and sings in a band, and the medical records confirm she was active in her band while off work. The physical therapy notes of August 2, 2011 indicate the claimant had no pain and had a normal range of motion. Medical notes of August 4, 2011 report increased pain that was subsiding. The claimant was treated with trigger point injections and the physician told her that nothing more could be done and the treatment should have resolved the injury. She was scheduled to be released without restrictions on September 16, 2011.

The employer called the claimant on September 12, 2011 to confirm her return-to-work date and the claimant voiced concern about returning to work. She was afraid she would re-injure herself. Shortly after that conversation, the claimant went in to talk with the employer and said that she was not going to return to work. She was going to school and said her outside activities had already been impaired due to the injury. The claimant had not been directed by a physician to quit her employment, she had no work restrictions as of September 16, 2011, and continuing work was available. The claimant continues to play in her band.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by telling the employer on September 12, 2011 that she would not be returning to work. She told the human resources director that she was afraid of injuring herself again and was going to go to school.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

DECISION:

The unemployment insurance decision dated October 19, 2011, reference 02, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw