

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE MORENO
Claimant

APPEAL NO. 17A-UI-11688-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 10/08/17
Claimant: Appellant (5)

Iowa Code Section 96.5(1)(d)– Voluntary Quit

STATEMENT OF THE CASE:

Julie Moreno filed a timely appeal from the November 6, 2017, reference 03, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Morena voluntarily quit on September 25, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on December 5, 2017. Ms. Moreno participated. Rhonda Hefter de Santisteban represented the employer and presented additional testimony through Kayla Hase. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-11689-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1, 2 and A into evidence.

ISSUE:

Whether Ms. Moreno'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: QPS Employment Group, Inc. is a temporary employment agency. Julie Moreno established her employment relationship with QPS on May 31, 2017 and performed work in three work assignments. Ms. Morena was in an auto accident in 2006 and has chronic pain in her lower back and left leg related to injuries sustained in the auto accident. Ms. Moreno takes a prescription non-narcotic nerve blocker and prescription non-narcotic pain pill to address her chronic pain issues. At the time Ms. Moreno established her employment relationship with QPS, she referenced a desire for "light-duty" work. However, she thereafter accepted and performed work in three assignments that did not involve light-duty work.

Ms. Moreno's most recent assignment began on August 2, 2017 and was at LSC Communications, also known as Tops. The assignment was full-time, temp-to-hire. The work hours were 7:00 a.m. to 3:00 p.m., Monday through Friday. The work involved packaging and handling paper. The work required repetitive lifting. At the time Ms. Moreno commenced her

assignment at LSC/Tops, she did not have any medical restrictions. Ms. Moreno did not complete the assignment at LSC/Tops. Ms. Moreno last performed work in the assignment on September 25, 2017.

On September 26, 2017, Ms. Moreno notified QPS that she would not be reporting for work that day because she was not feeling well and could barely walk. QPS asked Ms. Moreno whether she intended to quit and Ms. Moreno advised that she was not quitting, but intended to take things day-by-day. Ms. Moreno did not return to the employment. On September 27, 2017, Ms. Moreno consulted with a doctor and obtained a medical note that stated as follows: "Advised to quit job medically unable U of I under [illegible] for her pain problems, obesity, toh abuse." On September 27, Ms. Moreno attempted to send a copy of the medical note to QPS at the telephone number from which she had received QPS text messages. The particular telephone number was unable to receive photos by text message and QPS did not receive the medical note at that time.

On October 4, 2017, Ms. Moreno spoke with a QPS representative to advise that she was quitting the employment due to hip pain. Prior to quitting, Ms. Moreno had not asked QPS or LSC/Tops for reasonable accommodations that would allow her continue in the employment and did not present any medical documentation to the employer in support of a need for reasonable accommodation of her medical condition.

On November 20, 2017, Ms. Moreno delivered to QPS a copy of the above-mentioned September 27, 2017 medical note.

Ms. Moreno has not returned to the employer with medical certification that she has recovered from the pain issues that prompted her to go off work or proof that she is released to return to the QPS employment. Ms. Moreno has not returned to QPS to request work.

Since Ms. Moreno separated from QPS, she has continued to perform work in a second, part-time employment.

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.

Workforce Development rule 817 IAC 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 a voluntary quit that was effective September 26, 2017 and that was without good cause attributable to the employer. The quit was based on a non-work related medical condition. The quit was based on the advice of a licensed and practicing physician. However, Ms. Moreno has not returned to the employer with proof that she had recovered sufficiently to return to employment or with proof that she has been released to return to the employment. Nor has Ms. Moreno requested to be reinstated to the full-time employment at QPS. For these reasons, Ms. Moreno is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Moreno must meet all other eligibility requirements. The employer's account will not be charged for benefits. Ms. Moreno may also requalify for benefits by recovering from the medical condition that prompted her to leave the employment, by returning to the employer with proof that she has recovered and is released to return to employment, and by requesting to return to the full-time employment. If the employer at that time does not make work available to Ms. Moreno, the separation would at that point become for good cause attributable to the employer and the employer's account would be subject to charge.

DECISION:

The November 6, 2017, reference 03, decision is modified as follows. The claimant voluntarily quit the employment effective September 26, 2017 for a non-work related medical condition and upon the advice of a licensed and practicing physician. The quit was without good cause attributable to the employer. The employer's account will not be charged for benefits. The claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The employer's account will not be charged for benefits. The claimant may also requalify for benefits by recovering from the medical condition that prompted her to leave the employment, by returning to the employer with proof that she has recovered and is released to return to employment, and by requesting to return to the full-time employment. If the employer at that time does not make work available, the separation would at that point become for good cause attributable to the employer and the employer's account would be subject to charge for benefits. The claimant must meet all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs