

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THERESA ANN A WILLEMSSEN
Claimant

APPEAL NO. 12A-UI-04468-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

OC: 02/26/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 11, 2012, reference 01, that concluded the claimant left work due to an injury and offered to return to work but no work was available. A telephone hearing was held on May 14, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer or was she discharged for misconduct?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked full time for the employer as an assembler from September 28, 1998, to October 23, 2010. The claimant was diagnosed with peripheral neuropathy in her legs in 2009. Her doctor recommended that she avoid prolonged standing or walking to avoid aggravating her conditions. She provided these restrictions to the employer, but the employer was not able to accommodate them. Since the employer did not have work within her restrictions, the claimant applied and received short-term disability on and off in 2009 and 2010.

On January 4, 2010, the human resources supervisor sent the claimant a letter informing her that since the employer was not able to find a position within her restrictions, the employer was placing her on a one-year leave of absence. The letter stated that while she was on leave she was responsible for reviewing all open positions and was encouraged to apply for work she believed she was qualified for. The letter stated that "Should we be unable to find a position that meets your abilities by January 4, 2011, we will need to end your employment relationship with Pella Corporation."

The claimant followed the instructions she was given and applied for all available opening she believed she was qualified for. She was never offered any jobs. She was offered temporary office work at times, within her restrictions. She worked in temporary positions in September 2010, October 2010, and January 2011. She completed each temporary work assignment.

Although the claimant submitted a resignation in September 2011, she had not worked for the employer for many months because of the employer's actions in not accommodating her work restrictions, not hiring her in any jobs she applied for, and giving her only temporary work.

The claimant has been able to work and actively seeking work since applying for benefits effective February 26, 2012. She has an associate degree in health administration and has worked as a benefit specialist and office worker in the past, which are jobs within her restrictions. She has been seeking employment in an office position, and secured such a job in April 2012.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The claimant's employment ended after the employer put her on leave rather than accommodate her work restriction and only offered her short-time work assignments, which she completed and they ended in January 2011. Although she submitted a resignation in September 2011, she had not been working for many months not due to her not wanting to work but due to the employer's not having work within her restrictions, not offering her alternative work, and not hiring her for jobs she had applied for that she was able and qualified to do. Her resignation simply confirmed the employer's lack of work. The employer had stated in its letter that she would be terminated if the employer was unable to find a position that met her abilities by January 4, 2011. Her separation was not a voluntary quit and she was not discharged for work-connected misconduct. She did not refuse any offers of suitable work. She is qualified to receive benefits based on her separation from employment.

The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that requires prolonged standing and walking. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and the claimant has been actively looking for such work in compliance with the requirements of the law.

DECISION:

The unemployment insurance decision dated April 11, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css