

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 certified nurse's assistant from November 13, 2000 through July 13, 2005. She went on a non-work-related medical leave on May 4, 2005 and eventually had an angioplasty. The claimant was released without restrictions on July 11, 2005 and returned to work on July 12, 2005. She had been working the night shift, but there were no openings on the night shift, so the employer placed her on an evening shift. The claimant worked the evening of July 12, 2005 and her knee started bothering her, causing a lot of pain. She had knee pain before, and the employer accommodated her by placing her on the night shift since there was less walking. The claimant called the director of nurses on July 13, 2005 and said that she was quitting employment because she "could not handle it." There was no mention of knee pain, and the employer just assumed it was because of cardiac problems. The employer asked the claimant to put it in writing, and the claimant wrote a resignation notice that stated it was not working for her. The note mentioned nothing about knee pain.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code section 96.5-1. The claimant left her employment on May 4, 2005 due to a non-work related medical condition.

Iowa Code section 96.5-1-d provides:

An individual shall be disqualified for benefits:

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.

871 IAC 24.26(6)a, b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) 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.

The claimant went on a medical leave of absence due to a non-work-related illness. She would only be eligible for benefits if her position were not available to her after her recovery. A "recovery" under Iowa Code section 96.5-1-d means a complete recovery without restriction. White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992) (citing Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985)). The claimant contends that she is eligible for benefits under 871 IAC 24.26(6)(a) because she fully recovered and returned to the employer to offer her services, but no suitable or comparable work was available. The claimant's job duties were exactly the same, and the only difference is that she was assigned to a different shift. The Administrative Law Judge considers the work to be suitable and comparable.

Subsection (b) of the above statute is more applicable to the case herein. The claimant contends she left because of knee pain, which she considers to be work-related. When an employee leaves because of a work-related injury, the statute requires employees to take the reasonable step of informing the employer about the work-related health problem. The employee is also required to provide notice that she intends to quit her employment unless the problem is corrected or she is otherwise reasonably accommodated. The employer must be allowed the chance to correct those conditions before the employee takes the drastic step of quitting employment. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The claimant did not do this and she admitted the employer did not know her separation was due to her knee pain. The employer accommodated the claimant at an earlier time when she had knee problems and it could be assumed the employer would act in a similar manner this time. Inasmuch as the claimant did not give the employer an opportunity to resolve her complaints prior to leaving employment, the separation was without good cause attributable to the employer. Benefits are denied.

DECISION:

The unemployment insurance decision dated August 30, 2005, reference 01, 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.

sdb/kjw