IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KRISTINA K BOYLE
Claimant

WELLS ENTERPRISES INC
Employer

APPEAL NO. 11O-UI-11087-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/21/10
Claimant: Appellant (1-R)

Section 96.5(1)(d) – Voluntary Quit

STATEMENT OF THE CASE:

This matter was before the administrative law judge based on an Employment Appeal Board remand for new hearing in Hearing Number 11B-UI-06292. A hearing before an administrative law judge had occurred on June 8, 2011 in Appeal Number 11A-UI-06292-MT and the employer had been denied the opportunity to participate in the hearing. The appeal proceedings are ultimately based on the claimant's timely appeal from the May 4, 2011, reference 01, decision that denied benefits in connection with an April 5, 2011 voluntary quit. After due notice was issued, a new hearing was held on November 1, 2011. Claimant Kristina Boyle participated. Cheryl Roderman of TALX represented the employer and presented testimony through Brittany Sickels and Bob Vogt.

ISSUE:

Whether Ms. Boyle'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: Kristina Boyle was employed by Wells Enterprises as a full-time machine operator from 2007 until April 5, 2011, when she voluntarily quit based on a work-related medical condition. Ms. Boyle's immediate supervisor during the last several months of the employment was Bob Vogt, operations supervisor. Ms. Boyle's employment was also supervised by Crew Leader Hector Gonzalez, who answered to Mr. Vogt.

Ms. Boyle had suffered a strain in her left shoulder in February 2011 in the course of lifting some product she needed to add to ice cream as part of the employer's production process. The employer treated the incident as a workers' compensation matter and provided evaluation and treatment to Ms. Boyle through the employer's third-party workers' compensation administrator. Ms. Boyle returned to work on light-duty status. The treatment regimen included pain medication and attending physical therapy two times per week. Ms. Boyle did not like to take the pain medication or be under the effects of the pain medication at work.

As of February 25, 2011, Ms. Boyle was restricted to lifting no more than 15 pounds with her left arm. Ms. Boyle was restricted to bending, twisting, squatting no more than 2 to 4 hours at a time without a break. Ms. Boyle was restricted from repetitive grasping, pinching, pulling with her left hand and arm.

As of March 11, 2011, Ms. Boyle's lifting restriction increased to 20 pounds, but the other restrictions remained unchanged.

As of March 30, 2011, Ms. Boyle's lifting restriction increased to 25 pounds. Ms. Boyle was restricted from repetitive pushing or pulling with her left arm. Ms. Boyle was to perform bending, twisting, squatting no more than 4 to 6 hours without a break, but was to advance her work activities as tolerated.

The employer provided Ms. Boyle with work that met the accommodations set by the treating physician. In addition, the employer approved Ms. Boyle for intermittent leave under the Family and Medical Leave Act so that she could leave the workplace with approval if her assigned duties proved more than she could tolerate. It was the employer's intention and practice to fully comply with the medical restrictions and with Ms. Boyle's recovery. Ms. Boyle knew that if she were asked to perform a duty she thought was outside her capability or restrictions, that she could contact Mr. Vogt and her medical needs and restrictions would be accommodated. Mr. Gonzalez did not intentionally assign any work to Ms. Boyle that was outside her medical restrictions. The employer did not deny any accommodation necessary to meet Ms. Boyle's medical restrictions. Ms. Boyle dislike of taking or being under the influence of the prescribed pain medication at work made her work experience worse than it would otherwise have been.

Ms. Boyle last appeared and performed work for the employer on March 15, 2011. Between that date and March 30, Ms. Boyle called in absent for seven shifts based on the FMLA leave approval. Ms. Boyle was then absent without notifying the employer on March 31, April 1, 3, and 4. The employee handbook indicated that three consecutive no-call, no-show absences would be deemed a voluntary quit. Ms. Boyle had received a copy of the handbook.

On April 5, Human Resources Generalist Brittany Sickels made several attempts to reach Ms. Boyle by telephone before Ms. Boyle called back to speak with her about her intentions. Ms. Boyle indicated that she had spoken with the employer's third-party workers' compensation administrator on March 30 and had been advised that the employer now expected her to provide a doctor's note regarding the impact of her prescribed pain medication on her ability to perform work. This request had irritated Ms. Boyle and had prompted her to decide to quit the employment. The treating physician had instructed Ms. Boyle that she needed to take the medication so that she could perform the work within her medical restrictions. No doctor had recommended that Ms. Boyle leave the employment. Ms. Boyle acknowledged that the employer had been accommodating her medical restrictions, but told Ms. Sickels that she could take better care of herself at home. Ms. Boyle indicated that she was resigning and that she had left a message for Mr. Vogt that morning.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d provides:

> An individual shall be disqualified for benefits:
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> 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:
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> 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.
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> 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.
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> 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.

An employee who is absent from work without notifying the employer three times in violation of the employer's policy is presumed to have voluntarily quit the employment without good cause attributable to the employer. See 871 IAC 24.25(4).

The weight of the evidence in the record establishes a voluntary quit without good cause attributable to the employer. Ms. Boyle voluntarily quit the employment based on her belief that she could not continue to perform the work without further injuring herself and based on her belief that she could not work under the influence of prescribed pain medication. Ms. Boyle has provided no medical documentation to support her position. Ms. Boyle provided no medical documentation to the employer to support her position. The weight of the evidence fails to establish that continuing in the employment would have subjected Ms. Boyle to further injury or prevented her from recovery. The evidence indicates that the employer was fully accommodating the medical restrictions. The evidence indicates that Ms. Boyle second-guessed the treating physician and deviated from the doctor's instructions in deciding not to use the prescribed pain medication in connection with work and in deciding to quit the employment instead.

Ms. Boyle voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Boyle 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. The employer's account shall not be charged for benefits paid to Ms. Boyle.

DECISION:

The Agency representatives May 4, 2011, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant 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. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether the claimant has been overpaid benefits and for determination of whether the claimant has been able to work and available for work since she established her claim for benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw