IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 05R-UI-02987-SWT
OC: 05/30/04 R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 1, 2004, reference 01, that held the claimant voluntarily quit employment without good cause attributable to the employer. After a hearing before an administrative law judge, a decision was issued on September 30, 2004, but the Employment Appeal Board remanded the case for a new hearing because the tape recording could not be transcribed. A new hearing by telephone was held on December 10, 2004. The claimant participated in the hearing with her attorney at law, Mary Hamilton. Diane Wolthuizen participated on behalf of the employer with witnesses, Marilyn Bowen and Juanita Thaden. Exhibits D-1 and A were admitted into evidence at the hearing. After the hearing, a decision was issued that the claimant had failed to file a timely appeal. That decision was reversed by the Employment Appeal Board, and the Board remanded the matter for a decision on the merits and an additional hearing if the judge determined such hearing was necessary. The parties stipulated that a decision on the merits could be made

based on the record of the December 10, 2004 hearing, and the judge determined no additional hearing was necessary.

FINDINGS OF FACT:

The claimant worked for the employer as a dietary aide from February 9, 2000 to March 30, 2004. She was off work on medical leave starting November 26, 2003, due to surgery for a work-related back condition. The workers' compensation doctor released her to return for work effective February 6, 2004, with restrictions of no bending at the waist, no twisting, no lifting, and no prolonged standing and sitting. She returned to work on February 6, 2005, but aggravated her back condition after she was assigned work involving standing for long periods of time chopping food and serving food. The claimant complained to the workers' compensation doctor, who issued more detailed instructions that she should not stand or sit for longer than 30 minutes.

During the time the claimant was off work and after she returned to work, in addition to the physical problems that she had, she also experienced stress as a result of encounters with the case manager assigned to manage her workers' compensation case. The case manager constantly called her while she was off work and accused her of delaying her follow-up doctor's appointment. The case manager made comments suggesting that the claimant was a malingerer and was abusing her prescription drugs. When she returned to work, the case manager allowed her to be assigned work outside her medical restrictions. As a result of this treatment, the claimant contacted her attorney, who requested that the claimant have a different case manager. The claimant also experienced stress and depression as a result of her coworkers' unsympathetic reactions when she requested help with job duties. The claimant complained to management about these problems, but the problems continued.

The claimant continued to work through March 30, 2004, but became overwhelmed by her continuing problems with back pain, the issues with management regarding her restrictions, the resentment she felt from her coworkers, and financial issues. On March 30, 2005, the claimant attempted to commit suicide by taking an overdose of pain pills.

The claimant was hospitalized and received in-patient mental health treatment from April 1 to April 21. On March 30, 2004, her treating physician supplied the employer with a doctor's note excusing her from work on April 1 and April 2, 2004. On April 4, a member of the hospital staff notified the dietary supervisor that the claimant would be absent for the next three days and would contact the employer when she was better. On April 11, a member of the hospital staff notified the employer that claimant would be off work that week. On April 13, the human resources director, Dianne Wolthuizen, sent a letter to the claimant stating she had exhausted any leave under the Family and Medical Leave Act while she was off work due to her work-related injury and had no vacation or sick leave available. As a result, she was no longer entitled to heath insurance paid by the employer effective April 30. The claimant did not get the letter until late April because she was in the hospital. The claimant's psychiatrist advised the claimant to obtain in-patient alcohol treatment after her release from the hospital. In-patient alcohol treatment was arranged at Keystone Treatment facility from April 28 to May 28.

On April 22, the claimant contacted Wolthuizen and asked about the long-term disability benefits and told Wolthuizen that she would be receiving a fax from her doctor regarding her absences. The claimant called Wolthuizen again on April 27 after reading the April 13 letter regarding her insurance. Wolthuizen explained that the employer could not guarantee that she

would have a job and would probably need to fill her position. She also told the claimant that she had not received the fax from the doctor. Later that day, the claimant's psychiatrist faxed a statement to Wolthuizen excusing the claimant from working from March 31 through April 28, 2004. The statement further informed Wolthuizen that after April 28, she would be receiving updates from Keystone Treatment Center where the claimant would be receiving further treatment.

The claimant was in the Keystone Treatment Center from April 28 through May 28, 2004. While the claimant was receiving alcohol treatment, she asked personnel with the center on more than one occasion to notify the employer about her treatment status. The claimant believed that this information had been communicated to the employer. On May 23, the claimant called the employer and asked for the dietary supervisor. The supervisor was not there so she left a message that she was being released from treatment on May 28, would be available to work starting May 29, and wanted to be put back on the schedule.

The claimant called again on May 26 to see if when she was scheduled to work. Her call was transferred to Wolthuizen. She told Wolthuizen that she was released to return to work and wanted to know when she would be working. Wolthuizen notified the claimant that the employer had hired someone to replace her while she was in alcohol treatment and there were no other openings available for her in the kitchen. Wolthuizen said she was welcome to apply for other jobs in the facility.

The claimant understood that she was on leave from the employer and the employer was holding her job for her up until April 27 when Wolthuizen informed her the employer could no longer guarantee her a job and would probably need to fill her position. The claimant never informed the employer that she was quitting her job and never intended to quit employment. The employer replaced the claimant because the employer was uncertain when the claimant would be able to work again.

The claimant filed for unemployment insurance benefits for four weeks from May 30 to June 26, 2004, and then stopped filing for benefits and looking for work when she received the decision denying her benefits.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The claimant never informed the employer that she was quitting employment and never intended to quit her job. She stopped working because of a mental problem that required her to undergo in-patient treatment. She showed her desire to keep her job by having the medical staff notify the employer about her condition. Her time off was on the advice of her physician. She underwent treatment for mental illness and alcoholism, and the employer was aware of that fact. The employer in fact kept her job open for her for over a month, but while she was in

alcohol treatment, the employer replaced her. When she offered to return to work after being released from the treatment center, she was informed that she had been replaced and the employer had no work available for her.

The separation from employment in this case must be treated as a discharge by the employer. It was not due to any misconduct by the claimant but due to the fact that the claimant was not able to work and the employer needed to hire someone to fill her position. Such business reasons are understandable but do not make the claimant disqualified. This case is similar to Quenot v. Iowa Dept. Of Job Service, 339 N.W.2d 624 (Iowa App. 1983) in which a claimant stopped working due to a nervous breakdown and was not allowed to continue in employment after attempting to return to work. The court concluded the separation was involuntary, and the claimant was eligible for benefits.

Further support of this outcome can be found in the unemployment insurance rules, which provide that when an employer fails to reemploy an employee at the end of a leave of absence, the employee is considered to have been laid off due to lack of work and eligible for benefits. 871 IAC 24.22(2)j. Finally, even if this case is treated a voluntary quit due to health reasons, the claimant would be qualified since she left employment because of illness with advice of a physician, notified the employer that she needed to be absent because of the illness and offered to return to work for the employer after she recovered from the illness, but her regular work or comparable suitable work was not available. Iowa Code Section 96.5-1-d.

DECISION:

The unemployment insurance decision dated July 1, 2004, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/s