IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GLENDA L VRBA
Claimant

DONALDSON COMPANY INC
Employer

APPEAL NO: 06A-UI-08999-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/23/06 R: 04
Claimant: Respondent (1/R)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.26-6-b – Work-related Illness or Injury

STATEMENT OF THE CASE:

Donaldson Company, Inc. (employer) appealed a representative's August 28, 2006 decision (reference 01) that concluded Glenda L. Vrba (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 25, 2006. The claimant participated in the hearing and was represented by Robert Andres, Attorney at Law. Lesley Buhler of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Brenda Sloan. During the hearing, Claimant's Exhibits A through D were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on October 22, 1973. She most recently worked full-time as a press operator in the employer's Cresco, Iowa, air filter manufacturing facility. Her last day of physical work was May 25, 2005. From May 26 through November 30, 2005, she was on FMLA (Family Medical Leave) with short-term disability benefits; from December 1, 2005 through at least June 2, 2006, she was on an unpaid medical leave of absence.

The claimant had been suffering from back pain for about the last 19 years and had also been treated for neck pain; she had suffered an injury to her back in 1987 which was covered by workers' compensation. The claimant reported to her doctor on May 20, 2005 that she was suffering lower back pain with more frequency. The doctor indicated that the "repetitive bending, turning and twisting [in her work for the employer] tended to continue to aggravate both her neck and her back pain."

A surgery was performed in July 2005, but she continued to suffer pain. A magnetic resonance (MR) scan was done in February 2006; her doctor concluded:

> . . . Mrs. Vrba is suffering from diffuse degenerative disease in her entire spinal column. She is not going to be able to return to the type of work that she was doing for Donaldson on the assembly line that involves repetitive twisting, turning and bending as it is going to aggravate these degenerative changes. It is my opinion that these degenerative changes have accelerated because of the type of work that she does. I am, therefore, declaring Mrs. Vrba permanently disabled from performing the on-the-line manufacturing functions that she has performed in the past. . . . From a practical point of view she is not able to return to the type of work that she does for Donaldson on a permanent basis."

On March 10, 2006, the claimant's doctor sent a letter to Ms. Sloan, the employer's human resources manager, which included the above quoted language. At the time of hearing, Ms. Sloan did not recall seeing the letter, but acknowledged that she may have received the letter and that it might be in the claimant's file, which Ms. Sloan did not review prior to the hearing. There was sporadic communication between the claimant and Ms. Vrba after the date of this letter; both sides operated under the assumption that the claimant could not return to work with the employer at least in the assembly area. Ms. Sloan indicated that there would have been very little work available for the claimant outside of the assembly area; she made no offer to the claimant of any work that would be within the claimant's restrictions.

As it appeared the claimant could not return to her employment with the employer, the claimant inquired if she could retire so that she could receive her pension benefits. Ms. Sloan explained to the claimant that in order to receive pension benefits at this point, the claimant would need to be declared disabled for purposes of social security disability benefits. The claimant applied for social security disability, and in August 2006 learned that she was granted disability status effective June 22, 2006. She then submitted her resignation on August 15, effective June 22, 2006.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit, she would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

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.

Iowa Code section 24.26(6)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.
>
> 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 has satisfied the requirements of the rule. The employer was unable or unwilling to provide reasonable accommodation in order to retain the claimant's employment. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Benefits are allowed, if the claimant is otherwise eligible.

An issue as to whether the claimant is able and available for work arose as a consequence of the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's August 28, 2006 decision (reference 01) is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the able and available issue.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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