

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUEVONN A QUEZADA
Claimant

APPEAL 19A-UI-06703-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CELLCO PARTNERSHIP
Employer

**OC: 07/28/19
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On August 22, 2019, Sue-Vonn A. Quezada (claimant) filed an appeal from the August 20, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with Cellco Partnership (employer) for personal reasons, which does not constitute good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on September 25, 2019 and consolidated with the hearing for appeal 19A-UI-06704-SC-T. The claimant participated personally. The employer responded to the hearing notice and declined to participate in the hearing. No exhibits were offered into the record.

ISSUE:

Did the claimant voluntarily quit employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Solutions Specialist beginning on September 4, 2018, and was separated from employment on August 2, 2019, when she quit. The claimant worked customer service in a retail outlet for a cell phone provider. She was required to stand even when customers were not in the store and would not always get a lunch break. The claimant has back problems and requested intermittent leave of an additional two days a month to deal with her back pain. The employer granted the claimant's request.

The claimant's last day worked was July 30, 2019. She then missed two days of work due to back pain. On August 2, the claimant notified the employer she was leaving due to her medical issues. The claimant did not request any further accommodations from the employer before quitting her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is separated from the employment without good cause attributable to employer. Benefits are denied.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 Admin. Code r. 871-24.26(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 the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

The claimant's unrefuted testimony is that her back issues were aggravated by her work. For purposes of eligibility for unemployment insurance benefits only, the claimant's back issues will be considered work-related. The claimant did request an accommodation from the employer of additional days off which was granted. When that accommodation was not effective, the claimant did not notify the employer that additional accommodation was needed to maintain employment before quitting. As a result, the separation is without good cause attributable to the employer. Benefits are denied.

DECISION:

The August 20, 2019, reference 01, unemployment insurance decision is affirmed. The claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as she works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn