

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAWN M BROWN**

Claimant

**APPEAL NO. 07A-UI-02667-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**OC: 01/21/07 R: 03  
Claimant: Appellant (2)**

Section 96.4-3 - Able to and Available for Work

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated March 7, 2007, reference 02, that concluded she was on a leave of absence and ineligible for benefits. A telephone hearing was held on April 6, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Melissa Skinner participated in the hearing on behalf of the employer.

**ISSUES:**

Was the claimant able to and available for work?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a production worker from September 13, 2004, to January 22, 2007. On July 12, 2006, the claimant felt her shoulder snap while pushing a 70-pound box on the production line. The claimant missed work the next day due to pain in her shoulder. On July 14, 2006, the claimant filed a workers' compensation report of injury as a result of the medical problems with her shoulder. The claimant was evaluated and treated by the plant's nurse practitioner and was treated with therapy and anti-inflammatory medication. The claimant continued working. In August 2006, she was evaluated by a doctor because she continued to have pain and loss of mobility in her shoulder. The doctor continued the therapy and medication.

The claimant was given restricted duty as a result of her injury in August 2006. The employer only accommodates work-related medical conditions. The claimant continued working in a restricted duty job until January 22, 2007.

The claimant was evaluated by an orthopedic specialist who determined that the claimant had bone cysts in her shoulder. The doctor told the claimant that he was not sure as of the cause of her shoulder problems. Sometime prior to January 22, 2007, the orthopedic specialist notified the medical case manager for the employer that he did not consider the shoulder problem to

have been caused by the claimant's work. The claimant had never been informed of that conclusion. The employer then determined that it would no longer provide the claimant restricted duty work since the shoulder condition was not work-related.

On January 22, 2007, the claimant was informed by the employer that since she had an injury that was not work-related and the employer had a policy of not accommodating personal injuries, she could not work until she received a full release to return to work from a doctor. The claimant was informed that the only way that she could maintain her employment status and her medical insurance would be to request a medical leave of absence. The claimant requested a medical leave of absence to maintain her employment and insurance and applied for benefits under the employer's short-term disability insurance program. The employer granted the leave of absence and the claimant began receiving short-term disability benefits. The claimant's receipt of disability benefits was based on her not being able to perform her former job and not based on total disability.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 21, 2007. The claimant filed three weekly claims for benefits for the weeks ending January 27, February 3, and February 10. She stopped filing for unemployment insurance benefits at that point. During the period of time the claimant was filing for unemployment benefits, she was not totally disabled and there were jobs that she could perform with her restrictions. The claimant is a registered nurse and could perform office work.

Near the beginning of April 2007, medical professionals determined that the claimant needed a total shoulder replacement and surgery is scheduled for late April 2007. The surgery will require a period of recuperation before the claimant is again able to work. The claimant is still considered employed by the employer and will be allowed to return to work if she presents a release from a doctor.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether the claimant voluntarily quit employment without good cause attributable to the employer or was discharged for work-connected misconduct. 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.

There is no evidence the claimant quit her job or was discharged for work-connected misconduct. I recognize that Iowa Code section 96.5-1 provides a disqualification for individuals who voluntarily quit employment and Iowa Code section 96.5-1-d operates as an exception to that rule for individuals who voluntarily leave employment due to injury under certain circumstances. To voluntarily quit, however, 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). In this case, the claimant never quit employment or intended to leave her job. She desired to continue to work but the employer would not allow her to work.

This is like Wills v. Employment Appeal Board, 447 N.W.2d 137 (Iowa 1989), in which the Supreme Court considered the case of a pregnant CNA who went to her employer with a physician's release that limited her to lifting no more than 25 pounds. Wills filed a claim for benefits after the employer did not let her return to work because of its policy of never providing

light-duty work. The Supreme Court ruled that Wills became unemployed involuntarily and was able to work because the weight restriction did not preclude her from performing other jobs available in the labor market.

The next issue is whether the claimant was able to and available for work as required by Iowa Code section 96-4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that required full use of both arms. The claimant is a registered nurse, there is work available in the labor market meeting her restrictions, and the claimant has shown she was available for work. The fact the claimant is receiving short-term disability benefits does not affect her eligibility for unemployment benefits since the law only provides for deduction of temporary workers' compensation disability benefits. The payment of short-term disability benefits is based on a person not being able to perform their former job, and does not require an individual to be totally disabled.

The rules further provide that a claimant is considered unavailable for work if the claimant requested and was granted a leave of absence, since the period is deemed a period of voluntary unemployment. 871 IAC 23(10). In this case, however, the claimant did not voluntarily request the leave of absence so she cannot be considered to have been voluntarily unemployed. She was told that applying for such a leave was the only way for her to maintain her employment and insurance.

Finally, the claimant stopped filing for unemployment benefits and currently has surgery scheduled, which will require a period of recuperation before the claimant is again able to work. In order to receive benefits again, the claimant is required to provide medical evidence of her ability to work.

**DECISION:**

The unemployment insurance decision dated March 7, 2007, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css