

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

KAREN WALTERS

Claimant,

and

PRECISION OPTICAL GROUP INC

Employer.

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HEARING NUMBER: 07B-UI-08323

EMPLOYMENT APPEAL BOARD
DECISION

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Karen Walters, worked for Precision Optical Group, Inc. from September 25, 2007 through July 23, 2007 as a full-time customer service representative. (Tr. 2, 12) On June 25, 2007, the claimant requested time off from July 18th through the 27th to be "... with her daughter during her grandson's [brain] surgery [scheduled for July 19th] (Tr. 12) and rehab..." (Tr. 5, 6, 12) The claimant, however, had only 1.67 hours of paid leave available. (Tr. 7) Due to the employer's seniority policy, Ms. Walters' request was placed on hold.

On July 5, 2007, Holly Ferber (Customer Service Manager) denied the claimant's request for eight days, but indicated that she could approve only three days (July 18th- 20th) because the employer was short-staffed at the time. (Tr. 5, 7, 9, 12) Ms. Walter reapplied for only three days for which she was granted. The claimant continued to press for additional time because she believed she wouldn't be able to return to work any sooner on what the employer allowed. The employer granted her an extra day (July 23rd), which would allow her the entire weekend. (Tr. 8) The employer via Judy Hodge (Human Resources Director) advised Ms. Walters that "[she] was going to go to the owners and see if they could make an exception for a leave of absence..." The claimant declined this offer. (Tr. 8, 14) Ms. Hodge suggested that the claimant wait until July 23rd to request additional time. (Tr. 8, 14) The employer expected her to return to work on Tuesday, July 24th. (Tr. 17) Just before going on leave (July 17th), Ms. Walters cleaned out her desk and removed her personal belongings. (Tr. 5, 15) On July 23rd, the claimant contacted Ms. Ferber to inform her that she wouldn't be returning, as "[She felt] like [she was] where [she] needed to be." (Tr. 6, 15)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) (2007) provides:

An individual shall be disqualified for benefits: *Voluntary Quitting*. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employer no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5...

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

The record establishes that the claimant's request for time off to attend her grandson's major surgery and rehab was partially granted. By her own admission, Ms. Walters, told the employer that the approved leave (July 18th- July 23rd) was not going to be enough and that her family came first. (Tr. 8, lines 13-20; Tr. 13, lines 22-25) She chose to forego the possibility that a call from Ms. Hodge to the owners might yield an exception to her circumstances such that would allow Ms. Walters the time she needed. (Tr. 8, lines 15-17; Tr., 14, lines 18-19) The claimant's subsequent call to Ms. Hodge on July 23rd, indicating that she wouldn't be returning because of the circumstances was, again, her choice, as the employer had not definitively denied the claimant's request for eight days off.

It appears, for all intents and purposes, that Ms. Walters intended to quit her job when we consider the actions she took prior to actually going on her leave of absence. Ms. Walters' clearing out her desk, removing all her personal belongings from her workstation on July 17th preceded her phone call on the 23rd, which was to sever her employment relationship. She failed to make an additional request for time off during that phone call as Ms. Hodge had previously directed back mid-July. Considering the employer had already taken measures to accommodate her request, and had attempted to make it possible for her to obtain additional time off beyond the 23rd, we conclude that Ms. Walters decision to quit on that day without further inquiry was voluntary and without good cause attributable to the employer.

DECISION:

The administrative law judge's decision dated September 17, 2007 is **REVERSED**. The claimant voluntarily quit her employment without good cause attributable to the employer. Accordingly, she is denied benefits until such time she has worked in and was paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(1)"g".

Elizabeth L. Seiser

Mary Ann Spicer

AMG/fnv

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety. I would also note that the employer questioned the claimant's being able and available for work. Such inquiries should be directed to the Iowa Workforce Development Center, Claims Section for a determination of the same.

John A. Peno

AMG/fnv