

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE DUTHLER
Claimant

RAINING ROSE INC
Employer

APPEAL 16A-UI-07836-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/10/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 11, 2016, (reference 03) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on August 5, 2016. The claimant Michelle Duthler participated and testified. The employer Raining Rose Inc. participated through Human Resource Generalist Nikki Voss, Production Manager Derek Ellard, and Training Development Specialist Meredith Galloro. Claimant's Exhibit A was received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a production line worker from June 20, 2016, until this employment ended on June 23, 2016, when she voluntarily quit.

Within a day or two of beginning work for the employer, claimant noticed she was having an allergic reaction to something she believed she was coming into contact with at work. Claimant has an allergy to shea butter and did not realize this ingredient was used in nearly all of the items produced by the employer. Claimant approached a supervisor about the issue she was having and was immediately taken off the production floor. Claimant indicated that if a solution could not be reached she would have to resign her position. Claimant did not seek the advice or assistance of a medical professional. The day after claimant reported her reaction she was reassigned to the packing room, where all of the products had already been sealed, in hopes that this would limit her exposure to her allergen. After one day claimant determined this solution was not helping and resigned her position.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 Admin. Code r. 871-24.25(35) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee 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 § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

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.

Here, claimant did not see a doctor regarding her allergies. Thus, she cannot show that she resigned her employment upon the advice of a licensed and practicing physician. Likewise, while claimant did inform employer that she intended to quit unless she was moved to a position that did not involve work with the allergen, she has not provided competent and sufficient evidence to show she gave the accommodation presented by the employer a fair chance, as she determined after only one day that it was not adequate. For these reasons, claimant is presumed to have quit without good cause attributable to employer. Accordingly, although the separation was for good personal reasons, it was without good cause attributable to the employer under the law.

DECISION:

The July 11, 2016, (reference 03) decision is affirmed. The claimant voluntarily left her employment without good cause attributable to employer. Benefits are withheld until such time as she is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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