

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARON A BORMANN
Claimant

APPEAL NO: 10A-UI-15399-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPREHENSIVE SYSTEMS INC
Employer

**OC: 09/26/10
Claimant: Appellant (5)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(35) – Non-Job Related Illness

STATEMENT OF THE CASE:

The claimant appealed a department decision dated November 1, 2010, reference 01, that held she was not eligible for benefits effective September 26, 2010, because she was granted a leave of absence that is a voluntarily period of unemployment. A telephone hearing was held on December 21, 2010. The claimant, and her Attorney, Erik Fern, participated. Cheryl Heyenga, Program Director, Jeanie Hurd, Staff Development Specialist, Store Manager, participated for the employer. Employer Exhibit 1 and Claimant Exhibit A was received as evidence.

ISSUE:

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: The claimant began work for the employer on March 5, 2004. Claimant was terminated on July 5, 2010 due to sleeping on the job but she was re-hired on July 7. The claimant was diagnosed with sleep apnea and narcolepsy in August and she provided the medical information to the employer.

The employer conducted an investigation to determine whether claimant could perform her job duty given the medical diagnosis. Claimant's physician, Dr. Dominion, provided a statement to the employer on September 23 that claimant has difficulty staying awake and she is not safe to work alone with persons with developmental disabilities who require supervision for their safety. While the employer could accommodate claimant by having another staff person perform driving duties for her residents, it could not have any other staff working on the same shift provide supervision duties for claimant, because that staff had the same responsibilities for the residents assigned to that person.

Claimant advised the employer she was considering seeking a second medical opinion about her current diagnosis. The employer met with claimant on September 28 and it offered to place her on a leave of absence because she could not safely perform her supervisory resident job duties and she could obtain a further medical opinion.

The employer did not have any other job available to offer the claimant at the time she left employment on September 28, 2010. The employer did not consider cook, dietary aide or housekeeping jobs because it believed claimant could not safely perform those positions or provide some resident supervision duties due to her health condition. The claimant has not received a doctor release that she is able to perform all of her job duties as a direct support staff person without restriction.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 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.

871 IAC 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.

The administrative law judge concludes that the claimant voluntarily quit employment without good cause attributable to the employer on September 28, 2010 due to a non-job-related illness that prevented her from performing all of her job duties due to medical restrictions.

The employer is not obligated to provide claimant a modified job or different job when her non-job related health condition restriction(s) prevents her from performing all of her regular job duties. Wolf's v IESC, 59 NW2d 216 (Iowa 1953); Moulton v. IESC, 34 NW2d 211 (Iowa 1948). The claimant's doctor stated it was not safe for claimant to work alone due to her health issues, and one of her job duties was to independently supervise residents with developmental disabilities. There was no accommodation the employer could make to relieve claimant from this job requirement.

While the employer placed claimant on leave status, the evidence does not establish that claimant agreed to it or that it was for a specific term. Since the claimant has not recovered from her non-job-related illness nor has she been released by her doctor to return to work, she has failed to meet the requisites of the law. The claimant is disqualified from receiving benefits.

DECISION:

The department decision dated November 1, 2010, reference 01, is modified. The claimant voluntarily quit without good cause attributable to the employer on September 28, 2010 due to a non-job-related illness. Benefits are denied until the claimant has worked in and is paid wages for insured work, equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs