

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHELLY J SIKES
Claimant

APPEAL NO: 12A-UI-08834-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORWOOD INN LTD
Employer

OC: 06/24/12
Claimant: Appellant (1)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Shelly J. Sikes (claimant) appealed a representative's July 18, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Norwood Inn, Ltd. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 16, 2012. The claimant participated in the hearing. Derald Judson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on or about March 1, 2008. She worked part-time (about 32 hours per week) as a cook in the employer's bar and grill. Her last day of work was June 27, 2012.

The claimant normally worked a 6:00 a.m.-to-2:00 p.m. schedule. On the morning June 27, the claimant had a verbal exchange with a coworker who told the claimant that people did not like the claimant's stuffing and that she (the coworker) was going to make the stuffing. The claimant became upset and attempted to call the business president, Judson. The claimant reached Judson's mother, who told the claimant to calm down, but to call Judson directly. The claimant did not call Judson directly at that time, but rather told the coworker she was "done," and that she "can't take anymore," and left at about 9:30 a.m. She did not try calling Judson directly until about June 28, but she did not leave a message until she called him on June 29; at that point, she only left a message indicating she needed to get her paystubs. The claimant had expected that when Judson had learned that she had left, he would be calling her asking her why she had left and asking her to return.

The claimant subsequently indicated that she had left the employment because of medical reasons. She had been receiving treatment for her knees and for back problems, as well as issues with stress. She indicated that several months before, her doctor had suggested to her that she should look for some other job, but she did not inform the employer of this suggestion, nor did she indicate that she was suffering from any medical issue she felt was caused or aggravated by the workplace. She indicated that she had suffered from stress because of the work expectations placed upon her and the difficulties she had in communicating her concerns to the employer; however, the majority of the claimant's issues had been in existence for many years.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). An employee who leaves assigned work without permission and without explanation is generally deemed to have voluntarily quit. 871 IAC 24.25(27); *Langley v. Employment Appeal Board*, 490 N.W.2d 300 (Iowa App. 1992). There is no legal requirement or expectation that an employer must seek to prevent an employee from leaving or seek to persuade an employee who has left to return. The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

If the claimant voluntarily quit, it is her burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Where the quit is for medical or health reasons not attributable to the employer, the quit is disqualifying, at least until the claimant has recovered and seeks to return to work unless the medical or health issue is attributable to the employer. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b. Where a claimant has been compelled to leave employment upon the advice of her physician due to a medical or health issue not caused or aggravated by the work environment, the claimant is not eligible to receive unemployment insurance benefits until or unless the claimant then recovers, is released to return to work by her physician, and in fact does attempt to return to work with the employer. 871 IAC 24.25(35). Here, while the claimant indicated that her doctor had generically suggested that she look for other employment, it does not appear that the doctor officially directed her to do so.

Under some circumstances, a quit for medical or health reasons is attributable to the employer. Iowa Code § 96.5-1. Where factors and circumstances directly connected with the employment caused or aggravated an employee's illness, injury, allergy, or disease can be good cause for quitting attributable to the employer. 871 IAC 24.26(6)b. However, in order for this good cause to be found, prior to quitting the employee must present competent evidence showing adequate health reasons to justify ending the employment, and before quitting must have informed the employer of the work-related health problem and inform the employer that the employee intends to quit unless the problem is corrected or the employee is reasonably accommodated. 871 IAC 24.26(6)b. Here, the claimant has not presented competent evidence showing adequate health reasons to justify her quitting. Even accepting the claimant's verbal testimony

as to the recommendations made by her doctor, before quitting she did not inform the employer of the work-related health problem and inform the employer that she intended to quit unless the problem was corrected or reasonably accommodated. Accordingly, the separation is not for a medical reason attributable to the employer.

Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a coworker is not good cause. 871 IAC 24.25(21), (6). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). Rather, her complaints do not surpass the ordinary tribulations of the workplace. Further, the majority of the claimant's issues were ones she had accepted for many years and to which she had acquiesced. *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa App. 1990). The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's July 18, 2012 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of June 27, 2012, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw