

The claimant had suffered a work-related injury in August 2004 and a drug screening test was given to her when she went for medical treatment. The test came back positive for a controlled substance. Ms. Brierly was given a three-day suspension and required to consult an EAP counselor and follow the counselor's recommendations. Company policy also calls for at least one random test in the year following any positive drug screen.

In July 2005 the EAP counselor contacted the employer and recommended the follow-up drug screen be done before the one-year time frame expired. The appointment was set for July 26, 2005, and Safety Manager Jeff Neuwohner notified the claimant of the appointment on that day. She refused to take the drug test and said she was quitting because she felt the work hours and overtime were too much and she had no time for her family. Refusal to take the drug test would have been grounds for discharge, but she quit before any further disciplinary action could be taken by the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

Iowa Code section 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.

The claimant quit ostensibly because she did not like the work hours and the amount of overtime. However, there is nothing in the record to establish that she made her concerns known to the employer prior to being scheduled to take a follow-up drug screening. For a quit to be with good cause attributable to the employer the employee must first of all notify the employer of the problem and indicate she will resign if the problem is not addressed. Only if the employer does not resolve the concerns in a reasonable amount of time will the quit be with good cause. The administrative law judge considers the claimant's assertion that she quit because of the work schedule to be pretextual and that her real reason for quitting is that she feared being discharged for either refusing to take the drug test or having the test again come back positive for controlled substances.

The record establishes the claimant quit without good cause attributable to the employer and is disqualified from receiving unemployment benefits.

DECISION:

The representative's decision of August 24, 2005, reference 01, is affirmed. Shannon Brierly is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/kjw