

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE L WESTENDORF
Claimant

APPEAL NO. 10A-UI-09758-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRO RESOURCES INC
Employer

**OC: 12/20/09
Employer: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 29, 2010, reference 02, that held she voluntarily quit without good cause attributable to the employer on May 22, 2010, and that denied benefits. A telephone hearing was held on August 26, 2010. The claimant participated. Ashlie Green, Unemployment Specialist, participated for the employer. Claimant Exhibit A and Employer Exhibit One was received as evidence.

ISSUE:

Whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began work on assignment at Industrial Molding as a full-time general laborer on January 14, 2010. The claimant reported to the employer on March 10 that she was suffering from a job related injury that occurred on March 8. The employer sent her to clinic on March 10 for a medical evaluation.

A doctor noted that claimant expressed difficulty breathing, but he released her to return to work without restriction on March 11. The claimant's workers' compensation claim was denied. The claimant continued to work her regular job through May 19.

The claimant called in to report absences from work on May 20 and May 21 due to illness. The claimant knew she was getting close to employment termination due to the employer absence-point system. The claimant received a further medical evaluation and she was released by her doctor to return to work without restriction on May 22. The claimant failed to return to work and the employer terminated her as a voluntary quit.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

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 section 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 section 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 without good cause attributable to the employer effective May 22, 2010, when she failed to return to work after receiving an unrestricted work release by her doctor.

The claimant offered credible testimony that she has had a breathing problem and that she is ill. The expert medical information is that claimant is not suffering from a job-related illness or injury (March 10 evaluation), and she is released to return to work without restriction as of May 22, 2010. The claimant chose not to return to work after reporting absences on May 20 and May 21, and her employment separation is not based on medical advice that would make her eligible for unemployment benefits, given the circumstances in this case.

DECISION:

The department decision dated June 29, 2010, reference 02, is affirmed. The claimant voluntarily quit without good cause attributable to the employer effective May 22, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw