

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANA HARMS
Claimant

APPEAL NO: 15A-UI-10823-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN FAMILY SERVICE
Employer

OC: 08/30/15
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 18, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on October 12, 2015. The claimant participated in the hearing with small business owner, Christy Langley, and Attorney Grant Beckwith. Holly Eldridge, Operations Manager, participated in the hearing on behalf of the employer. Claimant's Exhibits A through F were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time receptionist for Lutheran Family Service from January 27, 2014 to August 31, 2015. She voluntarily left her employment because the air quality in the building was causing her to suffer from occupational asthma.

The claimant first sought treatment for an unknown condition when she went to an urgent care clinic January 12, 2015. In January 2015 she was experiencing difficulty breathing, tightness in her chest, dizziness and sharp chest pains. The claimant started having milder symptoms in November and December 2014 but thought she simply had a cold. In January 2015 her symptoms worsened and at that time she was diagnosed with pleurisy and bronchitis and given antibiotics. She went to a different urgent care clinic a few days later because she was still having breathing problems and severe chest pain. The physician at the second urgent care clinic also put the claimant on antibiotics but she could not get deep breaths and her condition did not improve.

By April 2015 the claimant believed there was something seriously wrong with her because she could not breathe well enough to speak complete sentences while still experiencing shortness of breath and sharp chest pains. Her physician sent her to a pulmonologist who performed a

breathing test April 3, 2015, and diagnosed her with chronic obstructive pulmonary disease (COPD). The claimant had quit smoking when she started having trouble breathing but still did not improve.

In May 2015 the claimant went on vacation and was able to breathe and speak in complete sentences even when hiking. As soon as she returned to work her health problems reappeared and she began to believe the building was making her sick. She started wearing a mask at work and repeatedly told the employer she felt there were chemicals or mold in the building that were making her and others sick. The claimant was the employer's only full-time employee at that worksite. The claimant asked the employer to accommodate her by allowing her to work at home but because she was the receptionist and the employer wanted her to be there to greet clients it denied her request. It did move her to an office with a small window and purchased an air purifier and respirator masks. One of the therapists took the air purifier.

By July 21, 2015, the claimant was having even more difficulty breathing unless she was outside. She was having trouble sleeping and when she did fall asleep she felt as if she was being "jolted" awake several times per night. The claimant called OSHA but it was limited in what it could determine. It made a finding there were no violations with regard to formaldehyde, carbon monoxide and carbon dioxide (Claimant's Exhibit D). OSHA responded to a further inquiry from the claimant that while the inspection did not find those three things, "there cannot be any other assumptions made regarding other air contaminants" (Claimant's Exhibit D).

The claimant's breathing continued to get worse and in August 2015, she was prescribed prednisone. She went to her follow up appointment August 14, 2015, and had not shown any improvement. The pulmonologist wrote a letter noting, "She tends to be asymptomatic when on vacation or weekends" and advising the claimant to leave her employment stating, "she would improve further by change in her work place environment" (Claimant's Exhibit E). On August 17, 2015, the claimant submitted her two-week notice stating she was resigning her position with the employer due to "health reasons associated with the workplace environment" (Claimant's Exhibit E). Her pulmonologist has also determined she does not have COPD and never did.

The building which housed the employer's office as well as several other business tenants flooded in October 2014, and had been undergoing construction since that time. There was mold in the building from the flooding and different chemicals used in association with the construction. Christy Langley, a business owner in the building with an office across the hall from the employer/claimant's office, also was diagnosed with occupational asthma by her pulmonologist, her allergist and an emergency room. Ms. Langley spent \$500.00 to have her home tested for environmental problems that could cause occupational asthma but the test results did not show any problems with her home. She then paid to have her office tested but had not received the results of the test at the time of this hearing. Ms. Langley testified that she found mold from the flood located under the office where the claimant worked. She also stated that the symptoms of mold exposure are problems breathing, chest pains, headaches and dizziness, almost all of which the claimant experienced and complained about to the employer. Ms. Langley has been reimbursed \$5,000.00 by the landlord's insurance company for her damages. She was diagnosed with thyroid cancer last week and believes it is due to the toxins she has been breathing in the building. She is also being allowed to break her lease because of the work environment.

The claimant submitted her two-week notice August 17, 2015, following her diagnosis of occupational asthma and the employer accepted her resignation effective August 31, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer.

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

In this case the claimant quit due to intolerable and detrimental working conditions that caused her to experience health consequences because of the mold and other environmental factors that affected her breathing and caused her sharp pains in her chest after the building was flooded in October 2014. The claimant noticed that when she was away from the building she had relief from her symptoms but when she returned to work she was unable to breathe and her chest hurt a great deal. She complained to the employer about the conditions on several occasions but the employer took relatively few steps to help alleviate the situation. The claimant was the only full-time employee for the employer at that location and whether the employer did not believe the claimant's allegations or simply did not know what to do, it did not take any significant action to have the building tested or find a solution to the problem.

The claimant's testimony was also bolstered by that of Ms. Langley. She had nearly identical symptoms to those of the claimant and has not only been reimbursed by the landlord's insurance company but is being allowed to break her lease due to the environmental conditions of the building.

Under these circumstances the administrative law judge concludes the claimant suffered a severe medical condition due to the toxins in the building following the October 2014 flood of the building and resulting mold and construction chemicals being used in the building after the flood. She did report her concerns to the employer and kept it apprised of her medical appointments and changing diagnosis. The claimant has demonstrated that her leaving was for good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The September 18, 2015, reference 01, decision is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs