

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KIMBERLY S ZICKAU**  
Claimant

**AREA SUBSTANCE ABUSE COUNCIL INC**  
Employer

**APPEAL 17A-UI-10551-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/27/17**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 6, 2017, (reference 02) unemployment insurance decision that denied benefits based on her voluntary quit. Notice of hearing was sent to the parties' addresses of record on October 18, 2017. The parties waived the ten-day notice period on the record at the time of the scheduled hearing. A telephone hearing was held on October 26, 2017. The claimant participated and testified. The employer participated through Executive Director Barb Gay. Claimant's Exhibits A through C and employer's Exhibits 1 through 3 were received into evidence.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a secretary/receptionist. On July 10, 2017, claimant went on a medical leave of absence for issues related to depression and anxiety. (Exhibit 1). Claimant testified, for the last two years she had been experiencing severe physical symptoms of a mold allergy, which she believes were triggered by her work environment. These symptoms led her to become depressed. On August 16, 2017, claimant's treating medical professional, Registered Nurse Practitioner Dorothy Anderson, released her to return to work effective August 8, 2017, with the condition that mold in the workplace be abated prior to her return. (Exhibit A). The release did not define what the air quality levels should be, nor did it specify what levels would be safe for claimant to return. Upon receiving claimant's release, the employer contacted the City of Clinton to conduct air quality testing. The testing levels came back with mold levels in the normal range and the work space was deemed safe to work in. The employer nevertheless agreed to take some remedial steps to address moisture and potential future mold issues within the workplace and offered to allow claimant to temporarily work at another site in the meantime. Claimant did not accept this accommodation, as she would not be

able to perform the functions of her job that allowed her to interact directly with patients and visitors, and would require her to work at a location primarily by herself. Claimant opted instead not to return to work.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant voluntarily quit without good cause attributable to the employer.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25(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.

Iowa Admin. Code r. 871-24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Claimant was released to return to work on August 16, 2017, under the condition that the mold in her workspace be abated. Iowa Code § 216.6 requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also, *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987).

The doctor's release does not contain sufficient information to indicate what would be acceptable levels for claimant to return to work. The employer had its air quality tested and testing showed it was safe. Though testing came back in the normal range, the employer determined to take steps to remediate the mold levels in the air and offered claimant the accommodation of working in another building while the issue was being addressed. Claimant declined this offer and chose not to return to work. While the accommodation offered may not have been claimant's preferred accommodation, it was reasonable for the purposes of this hearing and determination. In as much as the claimant was offered a reasonable accommodation, but nevertheless refused to return to work, she has voluntarily quit without good cause attributable to the employer. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are withheld.

**DECISION:**

The October 6, 2017, (reference 02) unemployment insurance decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs