

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALYSON J FISHEL**  
Claimant

**APPEAL NO. 09A-UI-15763-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FT DODGE CORRECTIONAL FACILITY**  
Employer

**Original Claim: 08-16-09  
Claimant: Respondent (1)**

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 12, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 4, 2010. The claimant did participate and was represented by Jerry Schnurr, Attorney at Law. The employer did participate through Cornell Smith, Warden, and Nancy Straight, Human Resources Representative, and was represented by David Williams of TALX UC eXpress. Claimant's Exhibits One through Fourteen were entered and received into the record.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a correctional counselor, full-time, beginning September 17, 1999 through June 23, 2009, when she voluntarily quit.

The claimant sustained a work injury in the form of bilateral cubital tunnel syndrome. Her treating orthopedic surgeon, Emil C Li, M.D., has opined that her injury was work-related. No medical opinion contrary to Dr. Li's was offered by the employer. As a result of the injury, the claimant stopped working on April 27, 2009. In January 2009 Dr. Li ordered an ergonomic assessment of the claimant's workstation. The employer did not comply with Dr. Li's order for the ergonomic assessment. The claimant has undergone two surgeries, one on her right arm and one on her left to repair a nerve impingement in each arm. As a result of the injury and subsequent surgical treatment, as of April 24, 2009 Dr. Li prohibited her from engaging in any typing or writing. The claimant's job requires extensive writing and typing. The employer is refusing to comply with Dr. Li's restrictions or to accommodate them, despite his uncontroverted opinion that the claimant's injuries were work-related. During a meeting of April 14, 2009, the employer asked the claimant to voluntarily resign her employment. When the employer would not accommodate her work restrictions that she not type or write at all, or provide her with workers' compensation benefits, the claimant voluntarily quit work on June 23, 2009.

The claimant is now able to work within her work restrictions.

**REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code § 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 24.26(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.

Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. *Shontz v. IESC*, 248 N.W.2d 88 (Iowa 1976). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason

is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. *Raffety v. IESC*, 76 N.W.2d 787 (Iowa 1956). The employer did not follow Dr. Li's recommendations and did not accommodate the claimant's work restrictions in another job that would accommodate the work-related condition. Under these circumstances, the claimant's voluntary quitting was with good cause attributable to the employer. Benefits are allowed.

**DECISION:**

The October 12, 2009, 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw