

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA E COJ
Claimant

APPEAL NO. 12A-UI-12647-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

OC: 09/23/12
Claimant: Respondent (1)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The employer filed an appeal from the October 12, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on November 26, 2012. Claimant participated through interpreter Sandra Romero. Employer participated through human resources manager Becky Jacobson.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to employer?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production worker and was separated from employment on August 15, 2011. She called in on the call line and quit. During the exit interview she said she quit because her arm still hurt after a work-related injury even though the company doctor had given her an injection and released her to return to work light duty. The nurse told her not to raise her arm above her shoulder. Her job duties required her to lift to the sides and in front of her. She also had to lift the skins above her shoulder to fill the combo to the top. The supervisor made her a stand to elevate her but the top of the combo was still at her chest level. Continued light duty work was available, however supervisors Dama Gonzalez and Jesus would not move her to lighter duty when she reported her arm still hurt in spite of the light duty work assignments. Brian said he would think about what he would do. She did not complain to human resources. She asked to go back to the company doctor after the medications irritated her stomach and her arm still hurt but they told her to wait two months. After she quit the employer called her and told her they had a doctor and surgery date set. Her surgery was on November 27, 2011. She has had permanent work restrictions since July 2012 and her workers' compensation benefits ceased in August 2012.

REASONING AND CONCLUSIONS OF LAW:

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

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.

871 IAC 24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The supervisors' failure to abide by the claimant's medical work restrictions created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

The administrative law judge further concludes that the claimant is able to work and available for work.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the injury is considered work-related for the purposes of unemployment insurance benefits and the treating physician has released the claimant to return to work after surgery, even with restrictions the claimant has established her ability to work.

DECISION:

The October 12, 2012 (reference 01) decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer and is able to and available for work effective September 23, 2012. Benefits are allowed, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs