

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**IRENE E ALVIZO**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL 16O-UI-12294-DGT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/10/16**  
**Claimant: Appellant (2R)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated July 29, 2016, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 8, 2016. Claimant participated. Employer failed to answer when called at the number provided and did not participate.

**ISSUE:**

Is the claimant qualified for benefits based upon her medically-related separation from the employment?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on July 28, 2016. Claimant was working as packer, and she was suffering from severe anxiety and stress that was being exacerbated by her employment. Claimant sought medical treatment for her illness, and applied for FMLA in June, 2016.

On or about June 30, 2016 claimant's treating physician recommended that claimant not return to work for the employer because work was exacerbating her condition, and it was making claimant's treatment impossible. Claimant followed her physician's advice and submitted her resignation on July 8, 2016.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment for no disqualifying reason.

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.

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.

The claimant has not established that the injury was caused by the employment but did establish that the medical condition would be aggravated by the work duties, which are permanently prohibited by the medical restrictions. Furthermore, the treating physician specifically advised claimant not to return to work.

While a claimant must generally return to offer services upon recovery, subparagraph (d) of Iowa Code § 96.5(1) is not applicable where it is impossible to return to the former employment because of medical restrictions connected with the work. See *White v. Emp't Appeal Bd.*, 487 N.W.2d 342 (Iowa 1992). Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. *Shontz v. Iowa Emp't Sec. Comm'n*, 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. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787 (Iowa 1956).

Because claimant's medical condition was aggravated by the working conditions, the decision not to return to the employment according to the treating medical professional's advice was not a disqualifying reason for the separation.

**DECISION:**

The July 29, 2016, (reference 01) decision is reversed. The claimant voluntarily left the employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

**REMAND:**

The availability and work search issues delineated are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/pjs