

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-10262-DT
OC: 08/22/04 R: 12
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

Barbara E. Susanto (claimant) appealed a representative's September 13, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 13, 2004. The claimant participated in the hearing. The employer received the hearing notice and responded by calling the Appeals Section, indicating that a representative would be available at the scheduled time for the hearing at telephone number 641-683-4766. However, when the administrative law judge called that number at the scheduled time for the hearing, the representative was not available. Therefore, the employer did not participate in the hearing. During the hearing, Claimant's Exhibits A and B were entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the

administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer on December 18, 2001. She worked full time as a general laborer in the employer's Ottumwa, Iowa pork processing facility. Her last day of work was August 12, 2004. She gave her verbal notice of quitting on August 9, 2004.

The claimant had an underlying medical condition, aseptic necrosis, a problem with her shoulders. The claimant's work had aggravated the condition, and she had also suffered some hand problems. She had been receiving medical treatment through the employer's workers' compensation coverage. She had been released by the doctor with maximum medical improvement as of December 3, 2003, with permanent restrictions for her right shoulder of avoiding repetitive work above her shoulder level and reaching above the head.

The claimant had some continued problem with her hands, and had seen a surgeon on May 24, 2004. The surgeon had advised that she be referred to a neurologist. As of August 9, an appointment with a workers' compensation neurologist had not yet been set up.

In June, the claimant began to consider moving to Oklahoma to be with her boyfriend, particularly as she continued to have problems with her hands. On July 30, she twisted her back at work and went to the company doctor. The doctor referred her for physical therapy and stated that x-rays were not necessary. Feeling that she was not getting proper medical attention, the claimant then determined that she would quit and move to Oklahoma. No doctor had given her written advice that she should quit her employment or that she should be given other duties or accommodations than what she was given.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code Section 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 Code Section 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 presented competent evidence showing adequate health reasons to justify her quitting as required. Rather, while she had some medical issues, rather than those reaching the point where a doctor had given her documentation to get other accommodations or quit, it basically pushed her to decide she would move to Oklahoma. Moving to another locality is not good cause for quitting. 871 IAC 24.25(2). Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The representative's September 13, 2004 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of August 12, 2004, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

ld/kjf