

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONRADA L SILK
Claimant

APPEAL NO. 10A-UI-05584-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

OC: 02/07/10
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Conrada Silk appealed from an unemployment insurance decision dated April 5, 2010, reference 02, that denied benefits in connection with a voluntary quit on February 19, 2010. A telephone hearing was held June 2, 2010. Ms. Silk participated. Jan Windsor, Office Manager, represented the employer.

ISSUE:

Whether Ms. Silk's voluntary quit from the full-time temporary work assignment was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Conrada Silk performed work for Temp Associates in two full-time temporary work assignments. The first assignment started in September 2009 and ended on February 5, 2010 when Ms. Silk completed the assignment. That assignment involved sedentary clerical work.

Ms. Silk accepted and started a new assignment on Monday, February 15, 2010. Ms. Silk worked in the assignment until Friday, February 19, 2010, when she voluntarily separated from the assignment because she found the work physically uncomfortable. The second assignment was at Silgan and involved factory work. Ms. Silk was to inspect cans and can lids away from a production line. Jan Windsor, Temp Associates Office Manager, offered the position to Ms. Silk and described the duties before Ms. Silk accepted the assignment. Ms. Windsor told Ms. Silk that she would be able to sit or stand as needed while performing the work. Ms. Windsor told Ms. Silk that the lifting involved would not exceed three pounds when Ms. Silk was lifting can lids. Ms. Windsor told Ms. Silk that the boxes of cans, if full, would not exceed 25-30 pounds, but that someone else would generally lift the boxes of that weight. The assignment was intended to be light industrial. Ms. Silk accepted the assignment after being appropriately advised of what the work would entail. Ms. Silk accepted the assignment because she believed she could perform the work.

Once in the assignment, Ms. Silk found that one of her feet hurt when she stood to perform the work. Silgan had provided Ms. Silk with a chair she could sit on while performing the work. Ms. Silk worked alongside another temp worker, who told Ms. Silk not to count on always having the chair available. That other temp worker had no supervisory authority over Ms. Silk. Ms. Silk's supervisor at Silgan never removed the chair in Ms. Silgan's work area and never told Ms. Silk that the chair would at some point be removed from her work area. Ms. Silk did not inquire with the Silgan supervisor or with Temp Associates about possible future removal of the chair after the other temp worker suggested it could happen at some point in the future. At the end of the work week, Ms. Silk decided not to continue in the assignment and separated from the work assignment. After Ms. Silk separated from the work assignment, she notified a Temp Associates representative, who had her notify the Silgan supervisor of her reason for leaving the assignment.

At the end of May 2010, more than three months after she voluntarily quit the full-time temporary work assignment, Ms. Silk was diagnosed with a small bone spur on her heel. Ms. Silk concluded this had been the cause of her pain when she stood to work at the Silgan assignment. Ms. Silk was diagnosed with diabetes at the same time, but this was not the cause of her pain during the Silgan assignment. As of Ms. Silk's separation from the Silgan assignment on February 19, 2010, Ms. Silk had not been diagnosed with any health condition that necessitated her separation from the assignment to avoid serious harm and the decision to quit the work assignment was not based on medical advice.

REASONING AND CONCLUSIONS OF LAW:

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.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence fails to establish a medical condition that necessitated a voluntary quit to avoid serious harm. The weight of the evidence indicates that the employer accurately represented the work to Ms. Silk. The weight of the evidence indicates that Ms. Silk was able to do the work, provided she had access to a chair so she could sit down to perform the work. The weight of the evidence indicates that Ms. Silk was provided with a chair she could use while performing the work and was never told by a supervisor that she would have to work without the chair. Ms. Silk unreasonably relied upon representations made by a coworker about possible loss of the chair at some point in the future. Ms. Silk's voluntarily quit from the employment was without good cause attributable to the employer. Accordingly, Ms. Silk is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Silk.

DECISION:

The Agency representative's April 5, 2010, reference 02, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs