

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MILENA NOVOSDOVA
Claimant

APPEAL NO. 11A-UI-07678-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

COTTAGE GROVE PLACE
Employer

OC: 05/01/11
Claimant: Appellant (2R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 31, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 27, 2011. Claimant participated. Employer participated by Jason Moyer, Environmental Services; Valerie Angerer, Human Resources Assistant; and Jim Feight, Staff Development Director. The record consists of the testimony of Milena Novosadova; the testimony of Jason Moyer; the testimony of Valerie Angerer; the testimony of Jim Feight; Claimant's Exhibit A; and Employer's Exhibits 1-5. Regina Frank served as Slovak interpreter.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed as a full-time janitor. She was initially hired on January 16, 2002. Her last day of work was April 5, 2011. The separation of employment occurred on April 27, 2011.

The claimant required surgery and asked for a leave of absence. Her original work release stated that she would be able to return to work on April 27, 2011. (Exhibit 2) A leave of absence was approved by the employer from April 11, 2011, until April 27, 2011. (Exhibit 1)

The claimant underwent major surgery. Her physician informed her and her son that she could not return to unrestricted work as she could not do the heavy lifting required by her job and could not push the vacuum cleaner. The claimant's son left a message for Valerie Angerer on the claimant's status. This message was left on or about April 18, 2011.

The claimant's physician would not release the claimant to full duty until June 6, 2011. The claimant spoke to her supervisor, Mona, and informed her that she would need additional time

off work. The claimant asked Mona what she should do and Mona said to bring her the new doctor's slip.

On April 27, 2011, the employer sent the claimant a letter telling her that she was considered to have voluntarily resigned her position effective April 27, 2011, due to her failure to return from her leave of absence.

REASONING AND CONCLUSIONS OF LAW:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

Separations of employment for health-related reasons are among the most difficult cases in unemployment insurance. The focus is on which party initiated the separation of employment. If the employer initiates the separation of employment, the general rule is that the claimant did not voluntarily quit. If the claimant initiates the separation of employment, then the issue is whether the claimant voluntarily quit for good cause attributable to the employer.

In this case, the greater weight of the evidence is that it was the employer who initiated the separation of employment. The claimant was given an approved leave of absence until April 27, 2011, based on her physician's initial assessment that she would be able to return to work by then. However, given the nature of her surgery and the physical demands of her job, she would not release her to return to full duty until June 6, 2011. Her employer terminated her based on her failure to return to work on April 27, 2011. The employer also cited her failure to request another leave of absence. Although the administrative law judge asked if that leave would have been approved, the employer did not answer the question directly.

The claimant testified that her son left a detailed message for Valerie Angerer on her status, including her return to work. Ms. Angerer does not recall any request for additional time off. The claimant also testified that she told Mona, her scheduler, that she could not return to work as planned on April 27, 2011, and that she delivered her doctor's slip to Mona. Mona did not testify at the hearing. The delivery of the slip to Mona may have been at the same time the claimant was being terminated.

The claimant clearly did not intend to quit. She liked her job and wanted to return. There was an obvious failure of communication somewhere and this may be due, in part, to the language barrier. However, the greater weight of the evidence is that the claimant did not quit her job but rather was terminated by the employer. Benefits are allowed if the claimant is otherwise eligible.

The claimant established her claim on May 1, 2011. The testimony at the hearing strongly suggests that the claimant was not able and available to work at the time due to the additional

recovery time needed. Although the claimant is not disqualified as a voluntary quit, she may not be eligible due to her illness. This matter is remanded to the Claims Section for determination.

DECISION:

The decision of the representative dated May 31, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible. This matter is remanded to the Claims Section for determination of whether the claimant was able and available for work at the time she filed her claim for unemployment benefits.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css