

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNNE M STAMUS
Claimant

APPEAL NO. 17A-UI-10178-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

K MART CORP
Employer

OC: 09/03/17
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Lynne Stamus (claimant) appealed a representative's September 28, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with K Mart Corp (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 20, 2017. The claimant was represented by clinical law students Elizabeth Teebagy and Mealea Thou and participated personally. John Allen, Clinic Supervisor, observed the hearing. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 20, 2014, as a part-time K-wash associate. The claimant signed for receipt of the employer's handbook near the time she was hired. At the time she was hired the claimant cleaned counters and worked outside in the gardening area.

The claimant had been diagnosed with diabetes, bowel obstruction, colitis, Crohn's Disease, and osteoarthritis. She provided medical documentation and restrictions to the employer on July 23, September 1, 2015, March 23, June 15, 2016, and May 10, 2017. The employer did not accommodate the claimant's restrictions of no lifting more than fifteen pounds and no heavy mopping.

On June 6, 2017, the employer notified employees that the store would be closing. The claimant's employment would be terminated within the fourteen day period following September 3, 2017. The claimant's duties changed to janitorial and store closing activities. The claimant had to mop the floor so much that she experienced heavy sweating and diarrhea. She

had to go home to change her clothing. The claimant complained about her job duties and her restrictions but nothing changed.

On July 25, 2017, the claimant had a colonoscopy. The doctor told her she could still not perform the lifting and mopping. On July 27, 2017, the claimant told the assistant manager she was quitting because she could not perform the job duties they were assigning.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.26(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.

The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that she intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. *Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant*, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer that it was having her work outside of her restrictions. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's September 28, 2017, decision (reference 01) is reversed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn