

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEBRAL WITT
Claimant

IA VETERANS HOME – MARSHALLTOWN
Employer

APPEAL NO. 21A-UI-18590-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/27/21
Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant, Debra Witt, filed a timely appeal from the August 16, 2021, reference 01, decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on June 23, 2021 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 13, 2021. Claimant participated personally and was represented by attorney Joanie Grife. Frankie Patterson of Corporate Cost Control represented the employer and presented testimony through Amy Van Baale.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by the Iowa Veterans Home from 2009 until June 23, 2021, when she voluntarily quit pursuant to a workers' compensation settlement agreement. Until February 2019, the claimant worked as a full-time certified nursing assistant (CNA). On February 28, 2019, the claimant fell in the workplace parking lot and suffered injury to her foot. The claimant's injury gave rise to a workers' compensation claim. The claimant remained off work for three months and was then released to return to work with restrictions that prevented her from returning to the CNA duties. The employer accommodated the claimant's medical restrictions by assigning the claimant to monitor the smoking room. While the claimant was assigned to monitor the smoking room, the employer kept the claimant's wage the same as the wage for the CNA work.

The claimant reached maximum medical improvement (MMI) from her workplace injury in December 2019. At that time, the claimant received a permanent medical restriction that limited her to being on her feet for no more than three hours a day. The permanent medical restriction prevented the claimant from returning to her CNA duties. At that point, the employer provided the claimant with the choice of a part-time Resident Assistant (R.A.) position, a full-time sedentary switchboard decision, or going off the payroll. The claimant chose the full-time

switchboard position in lieu of the other two options presented to her. The claimant continued to work in the full-time switchboard decision until June 21, 2021. The claimant did not particularly care for the switchboard position. Though the claimant asserts the sedentary switchboard position was physically and mentally challenging, the claimant was in all respects capable of performing the sedentary switchboard work. The claimant did not request accommodations in connection with the switchboard decision. The switchboard position paid about \$5.00 less than the claimant had received in the CNA position and in the smoking room monitor position. A physician did not advise the claimant to leave the full-time switchboard position.

On June 23, 2021, the claimant and the claimant's legal counsel entered into a workers' compensation settlement agreement with the employer and the employer's legal representative. The agreement between the parties included a \$77,000.00 payment to the claimant and the claimant's voluntary separation from the employment. After the parties signed the agreement on June 23, 2021, the claimant, with the assistance of counsel, sent a resignation text message to the employer. The claimant wrote that pursuant to the agreement, she agreed she would no longer be at work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(d) 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. 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 Administrative Code rule 817-24.26(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.

Iowa Admin. Code r. 871-24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

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).

While there is no Iowa case law on point regarding quits in the context of a negotiated workers' compensation settlement, other states have addressed the situation. In *Edward v. Sentinel Management Co.*, 611 N.W.2d 366 (Minn. App. 2000), the claimant resigned as part of a workers' compensation settlement agreement. The Minnesota court denied benefits, noting the claimant could have continued working while pursuing his claim. The evidence in the case established that the claimant could still perform his work and was doing so while the negotiations continued. The Minnesota court found the situation analogous to a person negotiating for early retirement while work was still available. In *Larson v. Michigan Employment Sec. Com'n*, 140 N.W.2d 777 (Michigan App. 1966), the Michigan court allowed benefits to a severely injured worker who could not perform his former duties and for whom the alternatives were remaining employed with no income or resigning in order to receive income. Iowa Workforce Development administrative law judges follow these lines of analysis and make similar distinctions.

The evidence in the record establishes that the claimant continued to be able to perform work for the employer, but voluntarily quit as part of the workers' compensation settlement. The

claimant could have opted out of the settlement agreement and continued in the full-time switchboard position while she pursued her workers' compensation claim.

The claimant asserts her separation was based on changes in the contract of hire that included changes in the work duties and wages. However, the changes in question occurred in December 2019, according to the claimant's testimony. The claimant elected to continue in the employment until June 2021 and thereby acquiesced in the changed conditions. The claimant's testimony at times included an assertion that she was only in the switchboard duties for six months. Remaining in the employment under the changed conditions for that period would also amount to acquiescence in the changed conditions.

The claimant asserts in the alternative that she was physically and/or mentally incapable of continuing in the full-time switchboard duties. The claimant's decision to leave the employment was not based on advice from a physician. The weight of the evidence does not support the assertion that it was medically necessary for the claimant to separate from the full-time switchboard duties. The weight of the evidence establishes that the claimant was in all respects able to perform the switchboard duties. Prior to quitting, the claimant did not request accommodations pertaining to health issues she alleges affected her ability to tolerate the sedentary switchboard duties.

The claimant both expressed an intention to sever the employment agreement and carried out that intention by electing to enter into the workers' compensation settlement agreement that included a voluntary quit provision and by submitting her written voluntary resignation. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant voluntarily quit the employment without good cause attributable to the employer. Accordingly, the claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The August 16, 2021, reference 01, decision is affirmed. The claimant voluntarily quit the employment on June 23, 2021 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

October 20, 2021
Decision Dated and Mailed

jet/scn