

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

BRIANNA R HARRISON JOYNT
Claimant

APPEAL NO. 23A-UI-04301-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA CVS PHARMACY LLC
Employer

**OC: 03/19/23
Claimant: Appellant (1)**

Iowa Code Section 96.5(1)(d) – Voluntary Quit
Iowa Code Section 96.5(1)(g) – Requalification

STATEMENT OF THE CASE:

On April 24, 2023, Brianna Harrison Joynt (claimant) filed a timely appeal from the April 20, 2023 (reference 02) 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 the claimant voluntarily quit on October 17, 2022 without good cause attributable to the employer and due to a non-work-related illness or injury. After due notice was issued, a hearing was held on May 15, 2023. Claimant participated personally and was represented by her mother, Mary Harrison Joynt. The claimant and her representative each testified. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibits A through G were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO and WAGE-A.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.
Whether the claimant has requalified for benefits since separating from the CVS employment.

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: Brianna Harrison Joynt (claimant) was employed by Iowa CVS Pharmacy, L.L.C. as a part-time non-certified pharmacy technician at the CVS pharmacy located inside the Mason City Target store. The employment began in February 2022. The claimant last performed work for the employer on July 4, 2022 and completed her shift that day. The claimant averaged 20 to 30 hours per week and generally worked the opening shift. Lisa Holt, Lead Pharmacy Technician, was the claimant's supervisor.

The claimant has suffered from migraine headaches since she was 12 years old. The claimant is 25 years old. The claimant continues to suffer from migraine headaches and continues under the care of a neurologist for treatment of migraine headaches.

On July 5, 2022, the claimant was helping with a project at home. The claimant moved a box from the basement to the outdoors. While the claimant was outside she began to experience a migraine with aura. The claimant does not usually experience such visual disturbances with her migraine headaches, but knows from experience that when such visual disturbance accompanies the migraine this signals it will be more difficult to move past the migraine episode. The migraine rendered the claimant incapable of seeing out of one of her eyes. It rendered the claimant incapable of driving to work and incapable of performing her pharmacy technician duties. The claimant contacted the employer to give notice of her need to absent. After the claimant had followed this pattern for a number of shifts, the claimant and her supervisor agreed the employer would cease scheduling her shifts and the claimant would let the employer know when she was able to return to work. The claimant's migraine-related health situation continued to deteriorate. The claimant was, for an extended period, incapable of daily activity beyond sitting quietly in a darkened room. For this reason, in August 2022, the claimant's mother took over communicating with the employer. The claimant continued under the care of her health provider.

Though the claimant did not take affirmative steps to apply for a leave of absence, the employer tentatively approved the claimant for a non-Family and Medical Leave Act (non-FMLA) leave through August 31, 2022. The claimant's ongoing health prevented the claimant from returning to work at the end of the period.

The employer informally extended the leave period into October 2022, but then engaged the claimant in text message correspondence regarding the extended absence and a need for the claimant to return to work, if she was able. The claimant was still unable to return to work due to her ongoing migraine issues. On October 17, 2023, the claimant notified the employer through text message that she was quitting the employment. The claimant had determined it was necessary for her to focus on her health issues, rather than on returning to work. The employer had continued to have work available for the claimant.

The claimant has never been released by a doctor to return to her pharmacy tech duties at CVS. The claimant's migraine condition continued to be severe until December 2022, temporarily improved, and then again became severe in February 2023. The claimant is still struggling with the migraine issue and its impact on her ability to work. The claimant has not returned to CVS, post-recovery, to request to return to the CVS employment.

On February 8, 2023, the claimant began new part-time employment through Spherion Staffing, L.L.C. Through Spherion, the claimant worked in a prescription preparation facility until March 24, 2023. The claimant's gross wages from the Spherion employment totaled \$1,861.00. Spherion reported this amount to Iowa Workforce Development as wages paid during the first quarter of 2023.

The claimant established her original claim for unemployment insurance benefits during the week that started March 19, 2023. Iowa Workforce Development set the weekly benefit amount at \$220.00. The claimant has not yet earned or been paid 10 times the weekly benefit amount since separating from the CVS employment.

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.

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 evidence in the record establishes that the claimant left the employment due to a non-work-related medical condition. The claimant left the employment effective July 5, 2023 in response to severe, non-work-related migraine headache. The claimant suffered from migraine headaches for more than a decade before beginning the CVS employment. There is no medical evidence, and no other credible and reliable evidence, that would tie the July 5, 2023 migraine onset, or any earlier migraine onset, to the conditions of the employment. The claimant remained off work, ostensibly upon the advice of a licensed and practicing physician, remained under the care of the physician, was never released to return to the employment, and never attempted to return to the employment. At the time the claimant notified the employer on October 17, 2022 that she was quitting the employment, she had been away from the workplace for almost three and a half months. Though the claimant might not perceive her departure from

the employment as voluntary, due to the medical basis for the departure, the claimant's departure was a voluntary quit within the meaning of the unemployment insurance law. The voluntary quit was without good cause attributable to the employer. The employer's account will not be charged. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. See Iowa Code section 96.5(1)(g). The claimant has not yet met the requalification earnings requirement. The claimant must meet all other eligibility requirements.

Because the quit was based on a non-work-related illness and ostensibly upon the advice of a licensed and practicing physician, the claimant may also requalify for benefits by (1) recovering from the illness to the extent necessary for her to perform all of her previous duties at CVS, (2) having her doctor certify the recovery, and (3) returning to CVS to request to return to the employment. If the employer at that point does not have the claimant's work or comparable suitable work available, the claimant's separation will become for good cause attributable to the employer and the employer's account will become subject to charge. The claimant must meet all other eligibility requirements.

DECISION:

The April 20, 2023 (reference 02) decision is AFFIRMED. The claimant voluntarily quit the employment without good cause attributable to the employer and due to a non-work-related illness. The claimant is disqualified for benefits until she has worked in and 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.

Because the quit was based on a non-work-related illness and ostensibly upon the advice of a licensed and practicing physician, the claimant may also requalify for benefits by (1) recovering from the illness to the extent necessary for her to perform all of her previous duties at CVS, (2) having her doctor certify the recovery, and (3) returning to CVS to request to return to the employment. If the employer at that point does not have the claimant's work or comparable suitable work available, the claimant's separation will become for good cause attributable to the employer and the employer's account will become subject to charge. The claimant must meet all other eligibility requirements.

The claimant has not yet requalified for benefits under either requalification path.



James E. Timberland
Administrative Law Judge

May 16, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.