IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

JULIE E BEAN
Claimant

ADVANCE SERVICES INC
Employer

APPEAL NO. 18A-UI-10199-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/09/18
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Julie Bean filed a timely appeal from the October 4, 2018, reference 01, decision that disqualified her benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Bean voluntarily quit on September 7, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 25, 2018. Ms. Bean participated and presented additional testimony through Randy Filling. Melissa Lewien represented the employer and presented additional testimony through Lisette Ottoway. Exhibits1 through 4, A and B were received into evidence.

ISSUE:

Whether Ms. Bean voluntarily quit the employment on or about September 7, 2018 without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Advance Services, Inc. (ASI) is a temporary employment agency. Claimant Julie Bean established her employment with ASI on July 30, 2018. On that same day, Ms. Bean started a full-time, temp-to-hire work assignment at Timberline in Marion. The assignment paid $11.00 per hour. Ms. Bean's core work hours in the assignment were 7:00 a.m. to 3:30 p.m., Monday through Friday. Timberline regularly required overtime work. The overtime work would shift Ms. Bean's start time to 5:00 a.m. The work at Timberline involved putting together wire harnesses. The work required that Ms. Bean stand at and walk around a work table that was eight to 10 feet long to map out and build wire harness to the customer's specifications. During the assignment, Ms. Bean suffered from swollen ankles and from pain and fluid in her left knee. Ms. Bean attributes these issues to the aging process. Timberline provided Ms. Bean with several breaks throughout the work day. When Ms. Bean worked the overtime hours, she would receive her first break at 7:00 a.m. That break would last at 10 minutes. Ms. Bean would receive another 10-minute break at 9:00 a.m. Ms. Bean would receive a 30-minute lunch break at 11:30 a.m. Ms. Bean would receive another 10-minute break at 1:30 p.m. Ms. Bean was allowed to sit during her breaks, but was otherwise required to stand to perform the work. The harness-building work could not be performed from a seated position.

Ms. Bean last performed work in the Timberline assignment on Friday, September 7, 2018. Ms. Bean was next scheduled to work on Monday, September 10, but did not report for work that day. On September 10, Ms. Bean was evaluated by a physician assistant at UnityPoint Health in Hiawatha. The provider gave Ms. Bean a medical note that stated as follows:

> It is my medical opinion that Julie E. Bean may return to work on 9/12/18 with restrictions. No working longer than 8 hour shifts and allow to sit during work hours to take pressure off left knee

After the medical appointment, Ms. Bean stopped at the ASI office in Cedar Rapids. Ms. Bean provided the employer with a copy of the medical note. Ms. Bean told Lisette Ottoway, ASI Human Resources Coordinator, that her health provider thought Ms. Bean had arthritis. Ms. Bean told Ms. Ottoway that the health provider had referred her for a knee x-ray. Ms. Bean did not know how long she would need the accommodations set forth in the medical note. Ms. Ottoway asked Ms. Bean to keep her posted. Ms. Ottaway agreed to notify Timberline of Ms. Bean's need to be off work and her need for workplace accommodations. Ms. Ottoway forwarded the medical note to Timberline and asked whether Timberline could accommodate the restrictions. Timberline responded that Ms. Bean's wire harness assembly duties required that she walk from one end of the table to the other and could not be performed while seated. Timberline added that none of the jobs for which Ms. Bean was trained were jobs that could be performed while sitting throughout the day. The Timberline representative asked Ms. Ottoway how long Ms. Bean would need accommodations. Ms. Ottoway responded that she did not know how long Ms. Bean would need accommodations and was waiting to hear further from Ms. Bean.

On September 11, Ms. Ottoway left a voicemail message for Ms. Bean, asking that Ms. Bean call to provide an update. On that day, Ms. Bean called ASI and spoke with Tamara Rundell, Branch Manager. Ms. Rundell documented the call. Ms. Bean told Ms. Rundell that her knee was swollen and that if it did not improve, she would be speaking with an orthopedic surgeon. Ms. Bean asked Ms. Rundell whether ASI had a different assignment for her. Ms. Rundell told Ms. Bean that ASI had available a seasonal sorting position at Pioneer. The Pioneer position would offer full-time day hours while it lasted, 7:00 a.m. to 3:30 p.m., would pay $10.00 per hour and was sedentary work. Ms. Bean did not provide an immediate response regarding whether she would accept or declined an assignment at Pioneer.

On September 14, Ms. Bean called ASI and spoke with Ms. Ottoway. Ms. Bean told Ms. Ottoway that she had spoken to her doctor and had ruled out surgery. Ms. Bean told Ms. Ottoway that she would not be returning to the assignment at Timberline. Ms. Bean had spoken with an Iowa Workforce Development representative regarding the $1.00 per hour relative decrease in pay and had concluded, based on that contact, that she was not required to acquiesce in the change in pay. Ms. Bean told Ms. Ottoway that she was passing on the Pioneer assignment and would be returning to work for a former employer, Pearson. Ms. Bean did not state why she decided to pass on the Pioneer assignment or why she did not wish to explore further options with ASI at that time. Ms. Bean had decided to pass on the Pioneer assignment due to the $10.00 per hour wage, a one-dollar per hour decrease in pay relative to the Timberline assignment. Ms. Bean said she would make contact with ASI after Pearson's season concluded. Ms. Bean had not accepted work with Pearson's.

Ms. Bean next made contact with ASI on September 27, 2018 and spoke to Ms. Ottoway. Ms. Bean advised that she was still intent on returning to Pearson, but asked whether ASI had another sit-down work assignment for her. Ms. Ottoway told Ms. Bean that she was recruiting for an assignment that required substantial experience with Microsoft Excel. Ms. Bean told Ms. Ottoway that she was not well versed in Excel. Ms. Bean was under the belief that Ms. Ottoway would be sending Ms. Bean's resume to the client business. Ms. Ottoway did not further consider Ms. Bean for the Excel-based assignment.

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 employer had an obligation to provide the claimant with reasonable accommodations that would allow her to continue in the work. See *Sierra v. Employment Appeal Board*, 508 N.W.

2d 719 (Iowa 1993). The employer was not obligated to provide Ms. Bean with unreasonable accommodations.

The evidence in the record establishes a voluntary quit that was without good cause attributable to the employer. The quit was effective September 14, 2018. Ms. Bean separated from the Timberline work assignment after that client business declined to provide Ms. Bean with sedentary work. ASI, not Timberline, was Ms. Bean's employer. Accordingly, Timberline was not obligated to accommodate Ms. Bean's need for workplace accommodations. That obligation fell to ASI. At Ms. Bean's request, ASI attempted to provide Ms. Bean with reasonable accommodations of her medical issues by offering a sedentary assignment that met Ms. Bean's medical restrictions. In the context of the changed conditions initiated by Ms. Bean and based on a non-work related medical condition, the $1.00 per hour pay difference did not provide good cause for Ms. Bean to quit the employment or terminate the discussion at that time regarding other opportunities. See Iowa Administrative Code rule 871-24.26(1) (regarding voluntary quits based on changes in the contract of hire). A reasonable person would have accepted the Pioneer assignment and/or continued the discussion with ASI at that time regarding other possibilities. At that time, Ms. Bean elected instead to pursue other options, though she had not accepted other employment. This situation involved a voluntary quit, not a work refusal subsequent to a separation from employment. Ms. Bean's September 14, 2018 decision to voluntarily separate from ASI, rather than accept the Pioneer assignment or further the accommodations discussion, was not based on the advice of a licensed and practicing medical professional. Finally, the discussion Ms. Bean initiated with ASI on September 27, 2018 has no bearing on the question of whether Ms. Bean's September 14 voluntary quit was for good cause Attributable to ASI. ASI was under no further obligation to find Ms. Bean additional work at the time Ms. Bean re-initiated the discussion on September 27, 2018.

Because the evidence establishes a voluntary quit without good cause attributable to the employer, Ms. Bean is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Bean must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The October 4, 2018, reference 01, 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 a been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/rvs