

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TESHA A CHARTIER
Claimant

APPEAL NO. 10A-UI-02742-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK TRIP INC
Employer

OC: 01/17/10
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 11, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 6, 2010. Claimant participated. Bambi Blaess, Store Leader, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUE:

Whether Ms. Chartier's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tesha Chartier was employed by Kwik Trip as a full-time café/deli worker from 2000 until December 21, 2009, when she voluntarily quit to relocate to the State of Washington. On December 7, 2009, Ms. Chartier provided the employer with two weeks' notice that she would leave the employment. Ms. Chartier had mentioned to the employer in Summer 2009 that she would be leaving the employment to move to Washington. Ms. Chartier's son was in Washington. In late fall, Ms. Chartier mentioned that she would be selling her house and moving to Washington. Ms. Chartier delayed her separation from the employment she could receive an expected year-end bonus check.

Ms. Chartier had suffered a workplace fall in 2006, but had subsequently been released to return to her regular duties. On October 22, 2008, Ms. Chartier was sweeping under some equipment when she pulled something in her back. Ms. Chartier was off work for a short time, returned to light-duty, and was released to return to her regular duties on April 22, 2009. Ms. Chartier returned to her regular duties, but a 30-pound lifting limit and an eight-hour work day limit remained in place as medical restrictions. The employer honored both for the duration of the employment. Ms. Chartier had requested no additional accommodations and did not tell the employer she would quit unless the employer provided additional accommodations. Ms. Chartier's doctor knew the type of work she did for the employer, but did never advised her to leave the employment.

Ms. Chartier had intended to leave for Washington on December 21, but weather delayed her move until the beginning of January 2010. Ms. Chartier's significant other and Ms. Chartier's parents also relocated to Washington.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d 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. 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.

Workforce Development rule 817 IAC 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.

When a person voluntarily quits employment to relocate to a new locality, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(2).

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 failed to establish a medically-based quit that would be for good cause attributable to the employer. The evidence indicates that Ms. Chartier's health did not necessitate her departure from the employment to avoid serious injury. The quit was not recommended by a physician. Ms. Chartier did not need and did not request additional accommodation over and above the 30-pound lifting restriction and the eight-hour shift the employer willingly provided. The evidence indicates instead that Ms. Chartier voluntarily quit to relocate to the State of Washington. Ms. Chartier's voluntarily quit was without good cause attributable to the employer. Accordingly, Ms. Chartier is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Chartier.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's February 11, 2010, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs