

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA D WILLIAMS
Claimant

APPEAL NO. 16A-UI-07005-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RANDSTAD GENERAL PARTNER US LLC
Employer

OC: 05/01/16
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Pamela Williams filed a timely appeal from the June 20, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Ms. Williams had voluntarily quit on March 9, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on July 13, 2016. Ms. Williams participated. Angie Keeler, Site Manager, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-07723-JTT. The administrative law judge took official notice of the agency's administrative record of benefits paid to Ms. Williams.

ISSUE:

Whether Ms. Williams separated from the employment for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer of liability for benefits

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Randstad General Partner U.S., L.L.C. (Randstad) contracts with the Kraft Hines production plant in Cedar Rapids to provide workers to the Kraft Hines plant. Pamela Williams was employed by Randstad and performed work in a full-time, temp-to-hire assignment at the Kraft Hines plant. The assignment began in October 2014. Ms. Williams last performed work in the assignment on February 23, 2016. Ms. Williams' immediate supervisor in the assignment was Kraft Hines supervisor Maurice Wallingsford. Abigail Fitzpatrick was the Randstad Site Coordinator assigned to the Kraft Hines account. The particular branch of Randstad that Ms. Williams worked for only serviced the Cedar Rapids Kraft Hines plant and had no other clients. Randstad had another branch office in downtown Cedar Rapids that provides temporary workers to other client businesses.

Ms. Williams' work duties at the Cedar Rapids Kraft Hines plant involved prepping food ingredients for the cooks to use in preparing product. Ms. Williams' duties included using a cart to transport milk to the production line. While Ms. Williams asserts she had to transport 700 pounds of milk at a time with a manually-operated cart, that assertion is not credible. The

actual amount transported per cartload was substantially less. Randstad's contract with Kraft Hines limits Randstad employees to lifting no more than 50 pounds. Ms. Williams' duties also included cleaning her work area.

On February 23, 2016, Ms. Williams was cleaning her work area when she suffered a minor workplace injury to her eye. Ms. Williams pulled on a container containing a long-handled tool. The tool handle swung forward and hit Ms. Williams in the eye. Though Ms. Williams was required to wear safety glasses while performing her duties, she had moved her safety glasses up onto her head because they were fogged over and was not protected by the safety glasses at the time of the impact. Ms. Williams initially decided not to report the incident. However, a Hines employee told Ms. Williams that she would need to complete an incident report. Ms. Williams went to the Kraft Hines company nurse. The nurse noted a red spot on Ms. Williams' eye and had Ms. Williams remain in the office for a short while. Ms. Williams then returned to the production floor and continued to perform her work duties. Ms. Williams experienced blurred vision and had a headache. Soon thereafter the shift was done and Ms. Williams went home.

At her mother's urging, Ms. Williams contacted Randstad Site Manager Abigail Fitzpatrick and requested to see a doctor about her eye. On February 24, Ms. Williams met with Ms. Fitzpatrick to complete an incident report for Randstad. The employer treated the matter as a worker's comp injury and claim. Ms. Fitzpatrick arranged for Ms. Williams to be evaluated by a doctor on February 29. That doctor referred Ms. Williams to an eye specialist. Ms. Williams had her first appointment with the eye specialist on March 2 or 3, 2016. The eye specialist told Ms. Williams that no treatment was necessary and immediately released Ms. Williams to return to her work duties. Ms. Williams telephoned Ms. Fitzpatrick to report that she had been released to return to work, but would not be reporting for work on March 3 or 4 and might not be returning to the assignment. Ms. Williams told Ms. Fitzpatrick that she was tired of working at Hines. Ms. Williams did not reference any other health issues.

Ms. Williams contacted the employer's worker's compensation carrier, asserted that she was still having problems with her eye, and requested to see a different eye specialist for a second opinion. The insurance carrier told Ms. Williams that arranging for a second medical opinion would be Ms. Williams' responsibility.

Ms. Williams did not return to the assignment at Hines. On March 7, 2016, Ms. Williams spoke with Ms. Fitzpatrick. Ms. Williams reports that she has cancer in both breasts and in her lymph nodes. Ms. Williams reports that her cancer doctor told her that she should look for other, less physically demanding work and that continuing in the Kraft Hines assignment was placing her health in jeopardy. Ms. Williams reports that her doctor counseled her against trying to further her education and told her that she needs to focus on her health. On March 7, Ms. Williams told Ms. Fitzpatrick that her doctor had recommended that she leave the assignment at Hines and look for other work. Ms. Fitzpatrick did not provide Randstad with any medical documentation to support her assertion that her cancer doctor had advised her to leave the Hines work assignment. Ms. Fitzpatrick has provided no medical document for the appeal hearing.

On May 17, Ms. Williams contacted Randstad's downtown Cedar Rapids branch to inquire about work. The employer invited Ms. Williams to come in for an interview, but Ms. Williams did not appear or make further contact with the employer.

On May 23, 2016, Ms. Williams had her first appointment with an eye clinic she contacted in Cedar Rapids and was referred to the University of Iowa Hospitals & Clinics for follow up care. Ms. Williams' initial appointment at the UIHC is scheduled for late July 2016.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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 weight of the evidence indicates that Ms. Williams is not the most reliable witness. The administrative law judge simply found not credible the assertion that Kraft Hines had Ms. Williams wheeling around 700 pound carts of milk. That testimony appeared to be an exaggeration. That exaggeration calls into question the reliability of other aspects of Ms. Williams' testimony. Ms. Williams on the one hand indicated that she was initially inclined to skip reporting the workplace injury, but decided to go see the nurse at the urging of a coworker. That testimony calls into question how much of an injury actually occurred if Ms. Williams concluded it was not worth reporting and had to be urged to report it. Ms. Williams' testimony, for lack of better expression, was all over the place. On the other hand, the employer representative had minimal personal knowledge of the matter.

The evidence in the record establishes that Ms. Williams voluntarily quit the employment by not returning to the employer after suffering a workplace injury on February 23, 2016. A medical specialist evaluated the injury, concluded no further treatment was necessary and released Ms. Williams to return to work on March 2, 2016. Ms. Williams elected not to return at that time. Ms. Williams asserts a further medical basis for her decision not to return to the employment. She asserts that she has cancer and that her health condition was aggravated by her work in the Kraft Hines assignment. However, Ms. Williams worked in the assignment over an extended period without incident. Ms. Hines did not provide the employer with any medical documentation to support a need for accommodations in the assignment or a medically-based need to leave the assignment or the employment to avoid harm to her health. Ms. Williams has provided no medical documentation for the appeal hearing to support any need for a medical accommodation or a need to leave the employment. Because Ms. Williams voluntarily quit and was not discharged, she had the obligation to present such evidence to prove a quit for good cause attributable to the employer. She has made allegations, but has not met her burden of proof.

The weight of the evidence establishes a voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Williams 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. Williams must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The June 20, 2016, 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 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs