

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARIN M WEIZEL

Claimant

APPEAL NO. 11A-UI-11540-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA

Employer

OC: 07/17/11

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated August 22, 2011, reference 01, which denied unemployment insurance benefits finding the claimant voluntarily quit work on July 15, 2011 because of a non-work-related illness or injury. After due notice, a telephone hearing was held on September 28, 2011. Claimant participated personally. Participating as a witness for the claimant was Ms. Annie Duff. The employer participated by Turkessa Newson, Human Resource Generalist. Exhibits A, B, and C were received into evidence.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Karin Weizel was employed by APAC Customer Services of Iowa from February 1, 2010 until July 15, 2011 when she voluntarily relinquished her position with the company. Ms. Weizel worked as a full-time customer service representative/advisor and was paid by the hour. Her immediate supervisor was Kasandra Johnson.

Ms. Weizel left her employment with APAC Customer Services of Iowa when the employer was unable to accommodate Ms. Weizel's desire to perform the majority of her work duties as an advisor, a position that the claimant believed would not require prolonged sitting. Ms. Weizel had undergone back surgery and had been away from work for a substantial period because of her non-work-related medical condition. Ms. Weizel had attempted to return to work on June 30 and July 6, 2011 but could not remain because of back pain associated with her medical condition.

Although the employer had emphasized that the company's business need was for customer service representatives, a job that required prolonged sitting, Ms. Weizel nevertheless believed that the company should have been able to accommodate her medical limitations. Although the

position of advisor also required prolonged sitting, the claimant believed the company should have assigned her only to that work.

Ms. Weizel resigned her position on July 15, 2011 and no full-time advisor positions were available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 96.5-1 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.

871 IAC 24.25(27) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(27) The claimant left rather than perform the assigned work as instructed.

871 IAC 24.25(35) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

(b) Obtain certification of release for work from a licensed and practicing physician;

(c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

(d) Fully recover so that the claimant could perform all of the duties of the job.

In the case at hand, Ms. Weizel left her employment because the employer was not able to provide with a job position that was not available. The claimant had been restricted due to a non-work-related illness or injury from prolonged sitting. The claimant's job as a customer service representative/advisor required prolonged sitting and Ms. Weizel was unable to return to that position because of a non-work-related illness or injury. The evidence in the record establishes that at the time of the claimant's return to work that there were no "advisor" jobs available that did not involve customer service representative work and prolonged sitting. The evidence in the record establishes that when the claimant had performed duties as an advisor she was required to sit for substantial periods of time and most recently due to company business needs the company needed all employees who were qualified to devote a majority of their work time to customer service-type work.

Because the claimant's illness or injury was not work related, the employer was not required to allow the claimant to return with a light duty limitation. When the employer had no work available for the claimant that Ms. Weizel believed that she could perform due to her non-work-related illness or injury she left employment with APAC Customer Services of Iowa. The reason for the claimant's quitting was her non-work-related illness or injury and not attributable to her employment with APAC Customer Services of Iowa. Benefits are withheld.

DECISION:

The representative's decision dated August 22, 2011, reference 01, is affirmed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs