

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CINDY S MOSS
Claimant

APPEAL NO. 19A-UI-04709-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

OC: 03/31/19
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Quit (Failure to return at expiration of leave of absence)

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's unemployment insurance decision dated May 31, 2019, reference 02, which denied unemployment insurance benefits, finding that the claimant voluntarily quit work on April 29, 2019 because of a non-work related illness or injury. After due notice was provided, a telephone hearing was held on July 5, 2019. Claimant participated. Although duly notified, the employer did not participate. Claimant's Exhibits A and B were admitted into the hearing record. The administrative file was identified as Department Exhibit D-1 and admitted into the hearing record.

ISSUE:

The issue is whether Cindy Moss left employment with Whirlpool Corporation with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the claimant's testimony and all of the evidence in the record, the administrative law judge finds: Cindy Moss began employment with Whirlpool Corporation on February 2, 2017 and was employed by the company until April 29, 2019. After her medical leave of absence had expired and Ms. Moss had elected not to continue working in the light duty assignment that had been given to her in that time by the employer.

On January 18, 2018, Ms. Moss experienced a trauma to her thumb. The source of the claimant's medical issue was determined to be arthritis, game-keeper's thumb, and carpal tunnel. The claimant's injuries were determined to be non-work related. Ms. Moss' claim for worker's compensation was denied and that decision was not appealed and became final.

During this time, Whirlpool Corporation had returned Ms. Moss to work during portions of January, February, and March 2018 and attempted to find light duty work for Ms. Moss that was acceptable to the claimant and that she could perform under the doctor's limitations that had been imposed by her physician because of Ms. Moss' non-work injuries.

At the conclusion of the claimant's medical leave of absence, Ms. Moss was called back to work by the employer and assigned a light duty position within the company that the employer believed complied with all of Ms. Moss' work limitations. After reporting for work on April 29, 2019, Ms. Moss left the employer's premises one hour and forty-five minutes later. Although the duties assigned were of the lightest type of duties, Ms. Moss declined and did not return from her leave of absence.

Ms. Moss has continued to look for employment that meets the physical limitations that had been imposed by her doctors.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Ms. Moss quit employment by failing to return to work at the conclusion of an approved leave of absence. It does.

Iowa Admin. Code r. 871-24.25(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 section 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 section 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.

Iowa Admin. Code r. 871-24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

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.

Iowa Admin. Code r. 871-24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

In the case at hand, the claimant had a medical issue that manifested itself at work, but later was determined not be caused by work-related accident or injury. Ms. Moss did not file an appeal from the determination that found the source of the claimant's medical malady to be non-work related and that decision became final.

After reporting her medical issue to the employer, she was granted paid short-term disability from April 4, 2018 until September 30, 2018. After her FMLA expired and she had not appealed the denial of her claim for worker's compensation, Ms. Moss took unpaid leave until the end of April 2019. After Ms. Moss' doctor allowed her to return to work with substantial restrictions, but would not allow her to return to her regular work as an assembler, the company continued to find a position for Ms. Moss within the company that met the medical restrictions.

In what appears to be a final attempt by the company to keep the claimant as an employee, the company offered Ms. Moss the most light duty position available and within the doctor's limits that had been imposed by Ms. Moss' physician. Ms. Moss declined to return to the position available to her at the expiration of her final unpaid leave of absence after working at the new position for less than two hours. Ms. Moss provided no additional doctor's releases or

limitations. The record does not establish that Ms. Moss was instructed to leave employment by her doctor.

Although Ms. Moss was able and available for work with restrictions and the position available to Ms. Moss met the guidelines prescribed by her physician, she declined the job position available to her at the conclusion of her most recent approved leave of absence and had not been advised to quit by her physician.

Although sympathetic to the claimant's situation, the administrative law judge concludes the claimant left employment when she did not return or accept a reasonable offer of a light duty accommodated job position at the end of her most recent mutually agreed upon leave of absence. The claimant left because of illness or injury that was not caused by the employment and had not obtained the advice of a licensed and practicing physician to do so. Accordingly, the administrative law judge concludes the claimant voluntarily quit work on or about April 29, 2019 because of non-work related illness or injury. The claimant's quitting was not attributable to the employer. Benefits are denied.

DECISION:

The representative's decision dated May 31, 2019, reference 02, 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 is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs