

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAUNTEYA K PHILLIPS
Claimant

APPEAL 21A-UI-08789-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARCO LTD
Employer

**OC: 02/21/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On March 28, 2021, claimant, Shaunteya K. Phillips, filed an appeal from the March 24, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that claimant quit her employment with the employer, Parco, Ltd., without good cause for doing so. The parties were properly notified about the hearing held by telephone on June 14, 2021. The claimant participated personally. The employer participated through HR Manager Juliet Diaz. Employer's Exhibits 1 through 5 were admitted to the record.

ISSUES:

Did the claimant quit her employment without good cause attributable to the employer?
Is the claimant able to and available for work effective the week ending February 27, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a manager beginning on January 9, 2020, and was separated from employment on February 21, 2021, when she resigned.

Claimant is diagnosed with hidradenitis, which causes abscesses under her arms and significant pain. The condition has required multiple surgeries, one of which has not been scheduled as of the date of claimant's appeal hearing. Her doctors have advised her not to work at least until she recovers from the upcoming surgery.

Claimant reported to Acting General Manager Kevin Wallace. She had spoken to Wallace in the past about her medical condition and her upcoming need for time off. Most recently, claimant had spoken to Wallace after returning from vacation out of state in mid-February 2021. She told him that she would likely need time off due to her upcoming surgery. Though Wallace had previously expressed willingness to work with claimant regarding her medical condition, he told her he could not "guarantee anything" with respect to the time off claimant would need.

On February 20, 2021, claimant attempted to call out sick because she was experiencing a flare of her symptoms. She first spoke with Charlotte Burris, another manager, who said claimant needed to come to work. Claimant told Burris she would call Wallace because she could not come to work. Claimant then called Wallace, who also told her she needed to work her shift. Claimant told him she could not, and she did not report for her shift that evening.

The following morning, claimant awoke to a text from Wallace saying that if she did not respond, he would assume she had resigned. She responded, "I guess I have resigned. I'll send the keys with Kevin when he works next. Have a great day." The employer considered her separated from employment due to resignation as of February 21, 2021.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether claimant's separation was disqualifying. For the reasons that follow, the administrative law judge concludes that claimant quit her employment with good cause attributable to the employer.

Iowa Code § 216.6 requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993); see also *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982); *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987).

Another fairness problem in treating employees with restrictions as quitting is posed by disability discrimination laws. Some employees with restrictions will be considered disabled and thus protected by the Iowa Civil Rights Act and the American's with Disabilities Act. Although disabled these employees may still be "able and available" if reasonable accommodation by employers would make them so. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993). Consider a disabled employee who presents restrictions and asks for reasonable accommodation. The employer (in this example) ignores its legal obligation and refuses to accommodate the employee. Under the alternate rule, the employee would be treated as quitting by demanding recognition of the right to accommodation. And yet if this same employee presents the same restriction to subsequent employers the employee under *Sierra* could remain "able and available." The employee is not automatically be deemed to be unduly restricted from employment under Iowa Admin. Code r. 871-24.22(2)m. Thus, in this example the employee would not be adversely affected by the need for reasonable accommodation in any but the first job. Again this result is unfair and seems to serve no policy. *Id.*

The applicable law and precedent led the Court to conclude that an employee who presents valid restrictions inconsistent with their employment duties should not be treated as quitting by that fact alone and recognized that the claimant did not just present restrictions, but also stayed off work because the work the employer offered did not accommodate the restrictions. Nevertheless, the claimant did not intend to quit, but intended to remain on leave until released to do the work offered. The separation occurred when the employer decided it could no longer wait for further recovery. The separation is thus either a termination or lay off, but not for misconduct, or another separation. Neither type of separation was disqualifying.

While the employer's testimony regarding potential accommodations available to claimant was credible, claimant's testimony was also credible when she asserted that those potential accommodations were not communicated to her. The employer is responsible for accurately

and timely communicating available options to claimant, just as much as claimant is responsible for timely requesting accommodations or other modification that would allow her to continue working. Claimant credibly testified that no such potential accommodation was communicated to her by Wallace when she attempted to discuss the matter, and that this was what made her feel there was no alternative but to quit her employment. The separation is not disqualifying.

The next question is whether claimant was able to and available for work. For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective the week ending February 27, 2021.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871—24.22(1)a provides:

Benefits 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871—24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra*, 508 N.W.2d at 721; *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871—24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra*, 508 N.W.2d at 723. The court in *Gilmore v. Emp't Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant testified that she was unable to work as of the time at which she separated from employment because of a flare of the symptoms of her medical condition. During the week ending March 20, 2021, claimant's car broke down. She has not had reliable transportation since that time. Shortly thereafter, during the week ending March 27, 2021, claimant was scheduled for surgery, which required recovery time. She further testified that her doctors have recommended that she not return to work of any kind at least until she recovers from her second set of surgeries, which are not yet scheduled. Accordingly, she is not able to or available for work as of the week ending February 27, 2021. Benefits are withheld until such time as the claimant obtains a medical release to return to work which she is capable of performing given her education, training, and work experience.

DECISION:

The March 24, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective February 27, 2021. Benefits are denied.



Alexis D. Rowe
Administrative Law Judge

June 28, 2021
Decision Dated and Mailed

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