

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI A PENDGRAFT
Claimant

APPEAL NO: 19A-UI-07801-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LACOSTA INC
Employer

OC: 01/13/19
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 1, 2019, reference 08, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on October 24, 2019. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time decant for Lacosta from February 11, 2019 to September 9, 2019. She voluntarily left her employment due to intolerable and detrimental working conditions.

The claimant was injured in a fall at work May 29, 2019, and hurt her right hip. She saw the employer's nurse and was given ice packs and was then sent to the employer's worker's compensation doctor and he ordered physical therapy. She continued working but was in a great deal of pain. On August 26, 2019, her supervisor told her to call corporate and when she did so she was told she waited too long to file her first report of injury and the case was closed. The claimant asked for various tools to help her perform her job more easily and with less pain but the employer did not provide her with anything beside a lift table. On September 9, 2019, the claimant's pain was not subsiding as she was required to push and pull using her injured hip and consequently she texted the employer and said she "could not do it anymore" and walked off the job. She is continuing to seek medical treatment.

REASONINGS AND CONCLUSIONS OF LAW:

For the following reasons, the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that she intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. *Hy-Vee, Inc. v. Employment Appeal Board and Diyonda L. Avant*, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant was injured at work and denied worker's compensation due to failing to make a first report of injury. She was in severe pain and subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's decision dated October 1, 2019, reference 08, is reversed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn