

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA L KNOUSE
Claimant

APPEAL NO. 07A-UI-07274-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**J.D. CARPENTER COMPANIES INC
HOME OIL STATIONS INC/SHORTSTOP**
Employer

**OC: 05/06/07 R: 03
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Sandra L. Knouse (claimant) appealed a representative's July 20, 2007 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from J.D. Carpenter Companies, Inc./Home Oil Stations, Inc./ShortStop (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 14, 2007. The claimant participated in the hearing. Larry Cook appeared on the employer's behalf. During the hearing, Claimant's Exhibits A through C were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on or about June 14, 2004. She worked part time as a clerk in the employer's Atalissa, Iowa, travel center. Her last day of work was June 26, 2007. She voluntarily quit on that date. Her reason for quitting was the employer's failure to return her to a shift other than the overnight shift after being advised of the claimant's doctor's recommendation.

Early in the claimant's employment the claimant had worked overnight shifts, but she had previously requested being only scheduled for days and evening shifts, which the employer had done for many months through March 25, 2007. The claimant then requested about four weeks off work, and additionally was laid off due to lack of work for two weeks, resulting in her being off work from March 26 through May 16, 2007. When the claimant returned to work she was being scheduled for several overnight shifts from 12:00 p.m. to 8:00 a.m.

The claimant had been diagnosed with some medical conditions including high blood pressure, and depression, with some insomnia and migraines. Her doctor advised that her working

overnight shifts aggravated these problems. Part of the aggravation was further due to the claimant experiencing stress by working overnight shifts with only one other employee on the premises; when she had previously worked overnight shifts prior to about October 2006, there were at least two other employee on the premises.

On or about June 14 the claimant approached an assistant manager and reported her doctor's recommendations and her resulting request that she then not be scheduled for overnight shifts; the assistant manager agreed to pass the information on to the store director, Mr. Cook. However, Mr. Cook did not feel he could accommodate the claimant's request as he was not sufficiently confident in the claimant's day to day availability so as to put her on earlier shifts. Therefore, no action was taken to change the claimant from being scheduled for overnight shifts, and as a result, the claimant quit.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

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.

871 IAC 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.

The claimant has satisfied the requirements of this law. It is unnecessary under the law that the employer's work environment causes the medical condition, only that the work "aggravates" the medical condition. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). While the employer may have had a good business reason for deciding not to accommodate the claimant's situation, the employer was unable or unwilling to provide reasonable accommodation in order to retain the claimant's employment. Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's July 20, 2007 decision (reference 02) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css