IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DEBRA R BRUMFIELD
Claimant

WOODLINK LTD
Employer

APPEAL NO. 11A-UI-16414-NT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/30/11
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated December 19, 2011, reference 01. After due notice, a telephone hearing was held on January 25, 2012 in consolidation with appeal number 11A-UI-16415-NT. The claimant participated personally. The employer participated by Ms. Karen Borre, Human Resource Manager and Mr. John Murry, CEO. Claimant's Exhibits One, Two, Three, Five, Six, Seven, Eight, Nine, Ten, Eleven and Twelve were received into evidence. Exhibit Four was offered but not received.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Debra Brumfield was employed by Woodlink Ltd. beginning June 5, 1995 and continuing until the company was purchased by Akerue Industries on June 2, 2011. The claimant continued to be employed by Akerue Industries until October 25, 2011 when the claimant left employment based on her belief that the work environment was detrimental to her health. Ms. Brumfield worked as a full-time production worker and was paid by the hour. Her immediate supervisor was Lyndell Davis.

Mr. Brumfield resigned her position with Akerue Industries effective October 25, 2011 stating that she was leaving because of her belief that chemicals had been introduced to the work environment that were having an adverse affect on the claimant's health. (See Exhibit Nine). Ms. Brumfield as well as a limited number of other workers had brought to the attention of company management the possibility that methyl bromide might be in the work environment and causing physical symptoms. Prior to resigning on October 25, 2011 the claimant ,however, had not indicated that she was considering quitting because of the issue. The claimant had not been advised to leave her employment for medical reasons by a medical doctor. The claimant left because she felt that the work environment was unhealthy.

It appears that the issue of potential methyl bromide in the work environment had been raised by the claimant's immediate supervisor and material safety data sheet was requested by the supervisor. When the potential health affects enumerated on the material safety data sheet for methyl bromide seemed to affect some of the physical maladies that Ms. Brumfield was experiencing, she concluded that the cause of her medical issues was in fact methyl bromide that had been introduced into the work environment to containers imported from China or India. Subsequently the claimant, her husband and two other employees were blood tested and showed elevated levels of methyl bromide.

Because of concerns raised by the claimant and a limited number of other workers, the company had the facility independently tested for contaminates, including methyl bromide by an independent testing organization. The test results showed only trace amounts of methyl bromide. The matter was also referred to the Occupational Safety and Health Administration, OSHA. On approximately three occasions OSHA tested the work environment and found no evidence of unsafe levels of methyl bromide in the work environment.

Although Ms. Brumfield continued to feel ill and continued to believe that her illness was caused by a contaminant in the work environment, she did not go to a doctor to have her concerns independently assessed by a medical practitioner. It appears that the claimant believed that medical practitioners in the area would not be objective and it is unclear as to why the claimant did not go to a medical practitioner out of the immediate area to see if her medical concerns were confirmed by a doctor. From time to time Ms. Brumfield used a dust mask to protect herself from possible exposure. Although the claimant was authorized to use a dust mask and or a respirator mask, she elected not to do so.

Although the employer had paid for some initial testing after Ms. Brumfield had complained about her physical maladies, the claimant wished to pursue a workmen's compensation claim. Based upon the initial evaluations it appears that the workmen's compensation carrier denied the claim. The employer attempted allay the concerns of employees by meeting with them and explaining that independent testing and OSHA testing had shown no appreciable levels of methyl bromide in the work environment. The employer had repeatedly aired out the facility and contacted the shippers to independently determine that methyl bromide had not been used as a fumigant and confirmed that the shippers had used a heat treating as a method of controlling the issue of insect contamination.

Although Ms. Brumfield states that she had been suffering from ongoing physical manifestations of what she considered to be methyl bromide contamination, she had been absent from work on only four occasions between February 2011 and October 25, 2011. The claimant believes that potential health affects described on the material safety data sheet provided by the company fit her physical manifestations and therefore the claimant elected to leave employment on October 25, 2011. Approximately two months thereafter, Ms. Brumfield consulted Dr. Susanna Von Essen, at the University of Nebraska Medical Center. At that time the claimant stated her previous medical symptoms, her belief that it was methyl bromide-related and stated to Dr. Von Essen that there were no other exposures that had caused her to have elevated methyl bromide levels. The claimant further stated to Dr. Von Essen that she and her husband reside on an acreage with animals. Based upon statements made by Ms. Brumfield to Dr. Von Essen, after the fact, Dr. Von Essen then concluded that methyl bromide that had previously elevated the claimant's blood levels was possibly used to fumigate wood products reported into the factory where the claimant had previously worked. (See Exhibit Twelve).

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant has sustained her burden of proof in establishing good cause for quitting employment attributable to the employer. She has not.

Iowa Code section 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(21) 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:
>
> (21) The claimant left because of dissatisfaction with the work environment.

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 the burden of proving that her voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Claimants are not required to give notice of intention to quit due to intolerable, detrimental or unsafe working conditions if the employer had knowledge of the condition. Hy-Vee v. EAB, 710 N.W.2d 1(Iowa 2000).

In this matter Ms. Brumfield left employment without advance notice to the employer on October 25, 2011 after she attributed not feeling well and elevated levels of methyl bromide in her blood to her work environment. Some months previously and three to four of the approximate 20 employees at the plant raised the possibility that physical maladies were being cause by methyl bromide in the work environment. The claimant had utilized information on a material safety data sheet provided by the company and information gleaned off the internet to conclude physical symptoms were cause by excessive methyl bromide exposure. After being informed of the employees' concern, the employer acted reasonably by not only having an independent inspection of the facility but also having OSHA inspect the facility on at least two occasions. Reports of the inspecting entities and OSHA reported no significant amounts of methyl bromides in the work environment. The employer had also aired out the facility and taken steps to ensure that the source of containers being brought into the facility were "heat treating" the containers rather than using chemical fumigants. The employer also noted that a majority of the individuals employed by the company were not complaining or indicating issues of the type that Ms. Brumfield or supervisor and one to two other employees were bringing to the attention of the company. Prior to leaving her employment Ms. Brumfield was not advised to leave her employment by a medical practitioner or doctor nor had the claimant presented competent evidence showing adequate health reasons to justify her leaving employment. The claimant did not go to the employer and indicate that she would quit unless the problem was corrected or that she was reasonably accommodated. Ms. Brumfield elected not to use dust masks and respirators that were available and allowed.

After leaving her employment, approximately two months later, the claimant conferred with a professor of medicine at the Nebraska Medical Center. The statement of Dr. Von Essen (see Exhibit Twelve) reflects that information used by Dr. Von Essen regarding exposure at the plant facility was provided by Ms. Brumfield and that the claimant had suggested that methyl bromide exposure was the cause of her maladies. The administrative law judge thus concludes that the information in the doctor's statement reflected only Ms. Brumfield's perception about her illness, its cause and the amount of exposure in the plant facility. The doctor's statement was not based upon any independent or first-hand knowledge on the part of Dr. Von Essen regarding the amount of any exposure to methyl bromides in the plant or other possible causes. The administrative law judge for these reasons concludes that Dr. Von Essen's statement is not pivotable in determining whether the claimant's leaving employment was attributable to Akerue Industries.

The administrative law judge concludes based upon the totality of the evidence in the record that while the claimant may have made a sound personal decision by leaving her employment, the evidence in the record does not establish that the claimant's previous elevated levels of methyl bromide were attributable to the employer. For the reasons stated herein the administrative law judge concludes the claimant left employment without good cause attributable to the employer. Benefits are withheld.

DECISION:

The representative's decision dated December 19, 2011, reference 01, is affirmed. The 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.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

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