

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDY PUTERBAUGH
Claimant

APPEAL NO. 07A-UI-06048-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRI-STATE NURSING ENTERPRISES INC
Employer

**OC: 04/29/07 R: 01
Claimant: Appellant (2/R)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Brandy Puterbaugh (claimant) appealed an unemployment insurance decision dated June 6, 2007, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Tri-State Nursing Enterprises, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 3, 2007. The claimant participated in the hearing. The employer participated through Janelle Townsend, Operations Manager. 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:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary staffing agency and the was claimant was hired in the Sioux Falls office on March 13, 2006. She began employment in the Sioux City office on July 6, 2006. She usually worked full-time hours as a certified nurse's aide. Her last full day of work was February 2, 2007 and she sustained a work-related injury on February 3. The claimant was placed on a 30-pound lifting restriction but she failed to return to work even though work was available. She advised her employer on February 14 that her work restrictions were going to be permanent and she could no longer work as a certified nurse's aide.

The issue of whether the claimant is able and available to work has not been addressed.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment

insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code section 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by not returning to work after February 3, 2007. She quit her employment due to a work-related injury. Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. Shontz v. IESC, 248 N.W.2d 88 (Iowa 1976).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. She has satisfied that burden and benefits are allowed.

The claimant's availability to work was not included in the Notice of hearing for this case, and the case will be remanded for an investigation and determination of that issue. 871 IAC 26.14(5).

DECISION:

The unemployment insurance decision dated June 6, 2007, reference 01, is reversed. The claimant voluntarily quit her employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided she is otherwise eligible. This case is remanded for further determination.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css