

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARI-ANN NIBECK

Claimant

APPEAL NO. 13A-UI-12146-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION

Employer

OC: 09/22/13

Claimant: Respondent (1-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Target, filed an appeal from a decision dated October 25, 2013, reference 01. The decision allowed benefits to the claimant, Mari-Ann Nibeck. After due notice was issued, a hearing was held by telephone conference call on November 20, 2013. The claimant participated on her own behalf and was represented by Gerald Kucera. The employer participated by Executive Team Lead of Human Resources Nicholas Rhomberg.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Mari-Ann Nibeck was employed by Target from October 23, 2007 until August 23, 2013 as a part-time worker in the deli. She had a previous work-related injury but had been returned to work. On August 14, 2013, she re-injured herself and left work and after that called in absent on other scheduled shifts.

On August 23, 2013, she called Executive Team Lead for Human Resources Nicholas Rhomberg. She apparently was asking for documentation from the employer about her August 14, 2013, injury so Target would pay for the medical appointment. Her communication was somewhat garbled and unclear and Mr. Rhomberg had agreed to meet her the next day but she never showed up. Ms. Nibeck maintained she contacted the third-party pension administrator on August 23, 2013, and was told by the representative the documentation showed she had been “terminated.” But Target did not remove the claimant from the system as an active employee until September 6, 2013.

Ms. Nibeck did not file a first report of injury on August 14, 2013, or at any time after that. She maintained she did not intend to quit but only that she was unable to continue working in the deli but had not been able to get in to see a doctor before August 22, 2013. She did not request a leave of absence in the meantime.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant does not appear to have been able to communicate her requests and intentions adequately to the employer. Her request for documentation from the employer on August 23, 2013, was confusing and she did not make it clear she was asking for another job besides the deli, not that she was quitting.

But it is nonetheless clear she was unable to continue working due to a work-related injury. Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986).

"[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.* "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700, 702 (Iowa 1988) ("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer."). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *E.g. Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956).

The claimant quit because she was unable to continue working due to her work-related injury. This constitutes good cause attributable to the employer and the claimant is qualified for benefits.

The issue of whether the claimant is able and available for work given her medical condition should be remanded for determination.

DECISION:

The representative's decision of October 25, 2013, reference 01, is affirmed. Mari-Ann Nibeck is qualified for benefits, provided she is otherwise eligible. The matter of whether the claimant is able and available for work given her work history, experience and current medical restrictions, is remanded to the Agency.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css