

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY L SIEREN
Claimant

APPEAL NO. 12A-UI-07092-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPTIMAE LIFESERVICES INC
Employer

**OC: 05/20/12
Claimant: Appellant (2)**

Section 96.5(1)6 – Quit/Medical

STATEMENT OF THE CASE:

The claimant, Sherry Sieren, filed an appeal from a decision dated June 6, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 10, 2012. The claimant participated on her own behalf and with Physician's Assistant Rob Baker. The employer, Optimae Lifeservices, participated by Program Director Vanessa Wells and Administrative Assistant Susan Lay.

ISSUE:

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

FINDINGS OF FACT:

Sherry Sieren was employed by Optimae Lifeservices from August 6, 2009 until May 18, 2012 as a full-time service coordinator, which was an office type position. On April 16, 2012, Ms. Sieren gave a written resignation to Program Director Vanessa Weller stating she had been advised by her physician to quit work because the stress of her work duties was causing medical problems and exacerbating existing ones. She gave a one-month notice.

The employer had requested a written statement from the physician and a few days after May 2, 2012, Ms. Sieren left such a document in the employer's mail slot, but it was never received, for reasons which are unknown.

During the one-month notice period, Ms. Weller discussed options for the claimant so she could remain employed. A part-time community services support position was proposed but Ms. Sieren felt dealing with the clients one-on-one would not be less stressful than the job she was currently doing. The claimant was aware of FML and general leave of absence provisions but did not request, or even discuss, the availability of such leave with her supervisor.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

The claimant quit upon the advice of her health care provider because the stress caused by the regular work duties was detrimental to Ms. Sieren's health. She had a doctor's note which was not received by Ms. Weller even though it had been put in her mail slot. The claimant never inquired whether it had been received and the supervisor did not question its absence.

In any event, the administrative law judge considers the claimant has met all the requirements of the above Iowa Code section except returning to the employer when she has been released by her doctor. There is little possibility Ms. Sieren will be able to return to this work environment.

Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of a serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. *Raffety v. IESC*, 76 N.W.2d 787 (Iowa 1956). Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code § 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 record establishes the claimant had good cause attributable to the employer for quitting and benefits are allowed.

DECISION:

The representative's decision of June 6, 2012, reference 01, is reversed. Sherry Sieren is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw