

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHY L ASHTON
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 19A-UI-07122-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/18/19
Claimant: Appellant (1)**

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On September 7, 2019, the claimant filed an appeal from the September 3, 2019, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on October 1, 2019. Claimant participated. Employer participated through store manager Karen Willoughby. Employer's Exhibit 1 was received.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on a part-time basis on January 28, 2019. Claimant was separated from employment on August 17, 2019, when she resigned.

In 2015, claimant had a heart attack. Claimant was diagnosed with cardiovascular spasms. If claimant is under a lot of stress and does too much physical work, her arteries will spasm and cut off her blood supply. Claimant sees a cardiologist once per year. The cardiologist has not issued any work restrictions, but told claimant to take it easy and use her own judgment.

When claimant was hired, she told store manager Karen Willoughby that she did not like to work in the kitchen. Claimant never told Willoughby that she did not like working in the condition because of her health condition or that working in the kitchen affected her health. Claimant preferred to work at the substation. The substation covers for the kitchen employee. Claimant was aware of this.

In June 2019, both parties agreed claimant would become a full-time employee. Willoughby informed claimant that based on her Monday through Friday availability, she would have to work at least some hours in the kitchen in order to get full-time hours.

After going full time, claimant complained again to Willoughby about working in the kitchen, but did not say it aggravated her health condition. Willoughby reminded claimant that in order to maintain full-time hours, she would have to work at least some hours in the kitchen. Claimant never asked to go back to part-time hours or told employer she would resign if she continued to be assigned to work in the kitchen.

In approximately July 2019, claimant told Willoughby that her husband found a higher paying job and she would like to eventually be home more with her children.

On August 17, 2019, claimant submitted her resignation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.26(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.

In this case, claimant asserts she resigned because working in the kitchen aggravated her heart condition and because she wanted to be home more with her children.

Claimant did not resign upon the advice of a physician or give employer notice she needed to resign because of her health condition. Therefore, to the extent the resignation was based on claimant's health condition, it cannot be considered with good cause attributable to employer.

Another reason claimant resigned is because she wanted to spend more time with her children. While that may be a good personal reason for resigning, it is not considered a good cause reason attributable to employer.

Claimant failed to establish she resigned for a good cause reason attributable to employer. Therefore, benefits are denied based upon this separation.

Because benefits are denied, the issue regarding whether claimant is able to and available for work is moot and will not be discussed further in this decision.

DECISION:

The September 3, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

cal/scn