

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETTIE A HARMON
Claimant

APPEAL NO. 09A-UI-01446-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**KAISER CONTRACT CLEANING
SPECIALISTS INC**
Employer

**OC: 01/04/08 R: 03
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 22, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 17, 2009. Claimant participated. Pamela Harmon was not available. Employer participated through Vicente Sierra.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a machine cleaner and was employed from September 16, 2008 until October 23, 2008 when she developed a rash from the chemicals used in her work duties. She self-treated with over-the-counter medication. A few weeks before the separation she advised Sierra that she needed to be switched to another job because she was having a reaction to the chemicals and he said he could not move her because they only worked on third shift and only had job duties available involving the use of chemicals. He told her to give it time and she would get used to it.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment for no disqualifying reason.

Iowa Code § 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.

871 IAC 24.25(35) 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 § 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 § 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

While a claimant must generally return to offer services upon recovery, subparagraph (d) of Iowa Code § 96.5(1) is not applicable where it is impossible to return to the former employment because of medical restrictions connected with the work. See *White v. EAB*, 487 N.W.2d 342 (Iowa 1992). 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). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of 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).

Because claimant's medical condition (rash) was aggravated by the working conditions (chemicals), the decision not to return to the employment was not a disqualifying reason for the separation.

DECISION:

The January 22, 2009, reference 01, decision is reversed. The claimant voluntarily left her employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs