

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NEVZA HODZIC

Claimant

APPEAL NO. 12A-UI-06692-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP

Employer

OC: 05/13/12

Claimant: Appellant (5-R)

Iowa Code Section 96.5(1)(d) – Voluntary Quit

STATEMENT OF THE CASE:

Nevza Hodzic filed a timely appeal from the June 6, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 19, 2012. Ms. Hodzic participated and presented additional testimony through Elvis Sulejmanovic. Norleen “Cookie” Formaro represented the employer and presented additional testimony through Thien Tran. Bosnian English interpreter Tanja Abramovic assisted with the hearing. Exhibits One, A and B were received into evidence.

ISSUE:

Whether Ms. Hodzic separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Nevza Hodzic was employed by Central Iowa Hospital Corporation, d/b/a Iowa Health Des Moines as a full-time housekeeper at Methodist Hospital. Ms. Hodzic started the employment in 2007 and last performed work for the employer on April 7, 2012. Ms. Hodzic’s immediate supervisor was Norleen “Cookie” Formaro.

At the end of March 2012, Ms. Hodzic provided Ms. Formaro with a doctor’s note dated March 27, 2012. The note indicated that Ms. Hodzic could not lift over 10 pounds and could not engage in heavy pushing or pulling. The note indicated that Ms. Formaro was suffering lower back pain as a result of a work injury in February 2012. This was the first the employer had heard of Ms. Formaro’s alleged work-related medical condition.

When Ms. Formaro spoke to Ms. Hodzic about the note, Ms. Hodzic indicated that her back issue occurred when she pulled a linen bag. Ms. Formaro asked Ms. Hodzic whether she had completed an incident report at the time of the alleged injury and Ms. Hodzic said she had not. Ms. Formaro directed Ms. Hodzic to complete an injury report and give it to Della Burham, the employer’s in-house Worker’s Compensation Manager. Ms. Formaro emphasized to Ms. Hodzic the importance of completing an incident report. Ms. Formaro completed the

supervisor's portion of the incident report. In response to the doctor's note, Ms. Formaro placed Ms. Hodzic on light duty. The light duty work consisted of dusting handrails, pictures and other duties that would not violate the work restrictions in the doctor's note.

During the first week of April, Ms. Hodzic provided Ms. Formaro with a doctor's note from Metro Anesthesia and Pain Management. The note excused Ms. Hodzic from work in connection with a medical appointment, indicated Ms. Hodzic could advance her duties as tolerated, but indicated Ms. Hodzic should continue on light duty until a doctor visit scheduled for April 25, 2012. During the first week of April, Ms. Hodzic provided Ms. Formaro with a separate doctor's note that excused her from work in connection with a medical appointment on April 6, 2012 and that indicated Ms. Hodzic had been placed on a new medication for her back. All of the doctor's notes up to this point were from Ms. Hodzic's doctor.

On April 11, Ms. Formaro contacted Ms. Burham to see whether Ms. Hodzic had been in contact with Ms. Burham and to see whether the employer had set up a medical evaluation. On April 12, Ms. Burham advised that Ms. Hodzic had been in contact and that Ms. Burham was waiting to hear back from one involved in the worker's compensation matter regarding the scheduling of an appointment.

On April 12, Ms. Formaro received a doctor's note that excused Ms. Hodzic from work during the period of April 8 through April 13. Ms. Formaro then received a doctor's note that excused Ms. Hodzic from work on April 16 and 17. Ms. Formaro then received a doctor's note that excused Ms. Hodzic from work on April 18-20 due to back pain. All of these notes were from Ms. Hodzic's doctor.

On May 3, 2012, Ms. Formaro received information from the employer's Disability Coordinator that included a work release from the Disability Coordinator. The materials indicated that Ms. Hodzic had been released to return to her full duties without restrictions. Ms. Formaro forwarded this information to Ms. Burham, the Worker's Compensation Manager.

On May 7, Ms. Formaro received an email message from the Disability Coordinator, who indicated that she had not spoke to Ms. Hodzic since April 16, 2012. The correspondence indicated that Ms. Hodzic's worker's compensation claim was denied. The Disability Coordinator said it was possible Ms. Hodzic was still being followed by another medical provider. Ms. Formaro spoke to Ms. Hodzic and then sent a return e-mail message to the Disability Coordinator. Ms. Formaro told the Disability Coordinator that Ms. Hodzic said she was on short-term disability status, that the worker's compensation doctor had released her to full duty, and that Ms. Formaro had directed Ms. Hodzic to give the Disability Coordinator a call.

On May 8, the Disability Coordinator notified Ms. Formaro that she had not yet received a short-term disability claim from Ms. Hodzic, but would expect to hear from Ms. Hodzic.

On May 17, Ms. Formaro contacted the Disability Coordinator to check on the status of Ms. Hodzic's short-term disability claim.

On May 18, the Disability Coordinator sent a message indicating that the most recent information she had about Ms. Hodzic was still the May 3 information that worker's compensation doctor had released her to return work. The Disability Coordinator stated that she had mailed a letter to Ms. Hodzic on May 4 indicating that Ms. Hodzic needed to submit a disability form to document her need to be absent beyond April 8. This date was referenced, despite the multiple doctor's notes Ms. Hodzic had provided to the employer in April. The Disability Coordinator had copied Amanda Banks, Human Resources Business Partner, in the

correspondence and had asked for input from Ms. Banks. Ms. Banks replied the same day that since no one had heard further from Ms. Hodzic, Ms. Formaro needed to contact Ms. Hodzic to learn her current medical status and when she planned to return to work. Ms. Banks indicated that in light of the worker's compensation doctor's May 3 medical release, Ms. Banks expected Ms. Hodzic to immediately return to the employment.

On May 18, Ms. Formaro telephoned and spoke with Ms. Hodzic. Ms. Hodzic indicated that she could not come back to work because she hurt too much and was still under a doctor's care. Ms. Hodzic said that if Ms. Formaro wanted to fire her, she should just fire her. Ms. Formaro told Ms. Hodzic that she was not looking to fire Ms. Hodzic. Ms. Formaro told Ms. Hodzic that if she did not provide further documentation to support her need to be off work, the employer might consider this to be job abandonment. Ms. Hodzic replied, "Just fire me." Ms. Formaro told Ms. Hodzic that she would speak to her own supervisor, Thien Tran, Evening Housekeeping Supervisor, and the employer's human resources staff to see where they needed to go from there.

On May 21, 2012, Ms. Formaro again telephoned and spoke with Ms. Hodzic. Ms. Formaro requested that Ms. Hodzic submit medical documentation to Disability Coordinator regarding her need to be off work beyond May 3, 2012 and her short-term disability claim. Ms. Formaro provided May 25, 2012 as a deadline. Ms. Formaro did not hear further from Ms. Hodzic.

On May 30, 2012, the employer sent Ms. Hodzic a letter outlining the employer's attempts to get further documentation from Ms. Hodzic to support her need to be off work and the employer's position that Ms. Hodzic had resigned from the employment.

Ms. Hodzic is a non-native English speaker. Her native language is Bosnian. Ms. Hodzic had been able to converse with Ms. Formaro in English during their multiple discussions regarding Ms. Hodzic's absence from work after April 7, 2012. Ms. Hodzic had also been able to converse with Ms. Formaro regarding her work duties throughout the employment.

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.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

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 general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record indicates that Ms. Hodzic voluntarily quit the employment effective May 3, 2012 by failing to return to work upon receiving a full release from the employer's worker's compensation doctor and by failing to provide the employer with any medical documentation to support her continued need to be off work. Ms. Hodzic has failed to present sufficient evidence to establish a work-related medical condition. Ms. Hodzic had failed to present sufficient evidence to establish a medical basis for continuing off work beyond May 3, 2012. Ms. Hodzic has failed to present evidence to establish that her decision not to return to work was based on advice she received from a medical professional.

The weight of the evidence establishes voluntarily quit that was for personal reasons and not for good cause attributable to the employer. Accordingly, Ms. Hodzic is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Hodzic.

DECISION:

The Agency representative's June 6, 2012, reference 01, decision is modified as follows. The claimant voluntarily quit the employment for personal reasons and without good cause attributable to the employer effective May 3, 2012. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. This matter is remanded to the Claims Division for determination of whether the claimant has been able to work and available for work since she established her claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs