IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DIANE M KOFRON
Claimant

KWIK TRIP INC
Employer

APPEAL NO. 07A-UI-06034-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/13/07 R: 03
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Diane Kofron filed a timely appeal from the June 8, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 2, 2007. Ms. Kofron participated. Brenda Immerzeel represented the employer. Claimant's Exhibit A was received into evidence.

ISSUE:

Whether the claimant voluntarily quit for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Diane Kofron was employed by Kwik Trip as a full-time deli manager from May 9, 1992 until January 31, 2007. Ms. Kofron's immediate supervisor was Store Leader/Manager Brenda Immerzeel. On December 28, 2006, Ms. Kofron walked off the job during her shift. Ms. Kofron was crying at the time she left and Ms. Immerzeel deemed it appropriate to wait until Ms. Kofron was no longer upset before attempting to discuss the early departure. On December 29, Ms. Immerzeel telephoned Ms. Kofron and asked if Ms. Kofron would be returning to work. Ms. Kofron said she would not be returning. On January 1, Ms. Kofron appeared for work. Ms. Immerzeel was not at the workplace that day, but was present on January 2. On January 2, Ms. Kofron told Ms. Immerzeel that she would be quitting in two weeks. When Ms. Immerzeel asked Ms. Kofron why she was quitting, Ms. Kofron indicated she was quitting because the job was too stressful. On January 5, Ms. Immerzeel asked Ms. Kofron whether she was sure she wanted to quit. Ms. Kofron said she was sure. Ms. Immerzeel asked Ms. Kofron to stay through the end of January and Ms. Kofron agreed. On week before the January 31 effective quit date, Ms. Kofron told Ms. Immerzeel that she would like to keep her job. District Manager Dave Walters was in the process of hiring a replacement for Ms. Kofron. Mr. Walters and the employer's human resources staff were not willing to allow Ms. Kofron to rescind her quit and continue in her position at the Janesville Kwik Trip. However, Mr. Walters offered Ms. Kofron a full-time position at a Waterloo Kwik Trip at the same wage, but with different duties. Ms. Kofron did not accept the new position and Ms. Kofron's employment with Kwik Trip ended on January 31, 2007.

Ms. Kofron is 48 years old. In 2006, Ms. Kofron underwent surgery to remove an ovary. During 2006, Ms. Kofron was going through menopause. In December 2006, Ms. Kofron discussed with her family doctor that the stress of her duties as Deli Manager was getting to be too much. Ms. Kofron's duties had remained the same. Ms. Kofron attributed some of her stress to the fact that she no longer attended monthly management meetings, but this change did not occur close in time to the notice of quit. Ms. Immerzeel continued to keep Ms. Kofron informed on any management policies, procedures, or promotions that affected Ms. Kofron's Deli Manager duties. Ms. Kofron's doctor recommended that that Ms. Kofron explore other employment, but did not specifically recommend that Ms. Kofron quit her employment with Kwik Trip. Ms. Kofron never said anything to employer about her discussion with her doctor regarding whether she should continue in the employment. In December, Ms. Kofron's doctor prescribed prednisone, which Ms. Kofron took for 10 days. Ms. Kofron ceased taking the medication on or about January 2. Ms. Kofron had been off the prednisone three days at the time she told Ms. Immerzeel that she still intended to quit. In July 2006, Ms. Kofron commenced taking a prescribed psychotropic medication to address depression. Ms. Kofron continued on the medication through the end of her employment and the dosage was increased in January 2007.

On June 16, 2007, in preparation for the appeal hearing, Ms. Kofron obtained a statement from her family doctor. The statement indicates that Ms. Kofron "inadvertently put in her notice of termination of employment during a time in her life while she was under medical care." The statement further indicates:

> She had been seen in my office and was treated with a medication for which she had a reaction. The reaction she suffered was similar in clinical appearance to severe depression with possible psychoses.
>
> During the time of treatment, she had behaviors not characteristic of her norm. She placed notification to stop her job without realizing exactly what she was doing.
>
> Her condition at the time, including the actions made while she was under the treatment plan, were not of her own psychological manner.

Since separating from the employment, Ms. Kofron had not returned to the employer to offer her services.

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.

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.

Workforce Development rule 871 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.

The greater weight of the evidence indicates that Ms. Kofron announced her intention to quit the employment on January 2, 2007, due to dissatisfaction with the work environment. Quits for this reason are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21). The greater weight evidence does not support a conclusion that Ms. Kofron's quit was based on the recommendation of a licensed and practicing physician. The evidence does not support any work-related medical condition. The greater weight of the evidence does not support the assertion that Ms. Kofron did not know what she was doing when she announced her quit on January 2 and/or when she reaffirmed her intention to quit on January 5. The greater weight of the evidence indicates that the employer accepted Ms. Kofron's resignation on January 5 and reasonably relied upon the notice of quit in taking steps to hire a replacement. The evidence indicates that Ms. Kofron's position regarding her quit did not change until one week before the agreed upon January 31 quit date.

Based on the greater weight of the evidence and application of the appropriate law, the administrative law judge concludes that Ms. Kofron voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Kofron 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. Kofron.

DECISION:

The Agency representatives June 8, 2007, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. 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.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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