

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEANNA R THOMPSON
Claimant

APPEAL NO. 09A-UI-05820-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF TRANSPORTATION
Employer

OC: 03/08/09
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Deanna Thompson filed a timely appeal from the April 3, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 21, 2009. Ms. Thompson participated. David Williams of TALX UC eXpress represented the employer and presented testimony through Major Ned Lewis and Chief David Lorenzen. Exhibits A through D were received into evidence.

ISSUE:

Whether Ms. Thompson's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Deanna Thompson was employed by the Iowa Department of Transportation as a full-time motor vehicle enforcement officer from the fall of 2007 until December 9, 2008, when she voluntarily quit the employment. Ms. Thompson submitted a written resignation on December 9 and the employer accepted the resignation in writing on December 9.

Ms. Thompson last performed work for the employer on September 26, 2008. On September 30, 2008, Ms. Thompson commenced an approved medical leave. Ms. Thompson and her doctor completed application materials for a medical leave under the Family and Medical Leave Act (FMLA). On October 16, 2008, the employer approved Ms. Thompson for FMLA leave deemed to have started on September 30, 2008. On October 17, the employer had retrieved Ms. Thompson's patrol car and employer-issued gun for safekeeping until she returned to the employment. Ms. Thompson was still on her approved FMLA leave at the time she resigned from the employment. While on the FMLA leave, Ms. Thompson's family doctor treated Ms. Thompson's mental health symptoms through psychotropic medication and referred Ms. Thompson for counseling.

Ms. Thompson's medical leave had been prompted by major depression symptoms. The depression occurred in the context of Ms. Thompson's father's heart surgery/heart condition and Ms. Thompson's minor son's delinquent conduct that brought him in contact with law

enforcement. Ms. Thompson's mental health condition negatively impacted her employment. Ms. Thompson was unduly stressed by the employer's standard training regimen that required her to train under different senior officers to gain the broad experience she would need to carry out her duties as a motor vehicle enforcement officer.

While Ms. Thompson was off work, she had regular contact with her family doctor and provided medical documentation to the employer at regular intervals. In connection with the FMLA application, Ms. Thompson's doctor indicated on October 14, 2008 that she was unable to perform her duties. On October 28, Ms. Thompson's doctor indicated that Ms. Thompson had been seen on that day, needed to remain off work, and would be reevaluated in two weeks. On November 11, Ms. Thompson's doctor indicated that Ms. Thompson had been seen on that day, needed to remain off work, and would be reevaluated in three weeks. On December 2, Ms. Thompson's doctor indicated that Ms. Thompson had been seen on that day, needed to remain off work, and would be reevaluated in one month. Ms. Thompson's resignation followed a week after the December 2 visit to her doctor.

On December 30, 2008, Ms. Thompson's doctor released Ms. Thompson to return to "any other position" than the motor vehicle enforcement officer position she had left. Ms. Thompson's doctor has not released her to return to the motor vehicle enforcement officer position. Ms. Thompson did not provide the employer with the December 30 release. Ms. Thompson did not return to the employer to request her previous position back.

Prior to her resignation, Ms. Thompson did not request accommodations that would allow her to continue in the employment. Ms. Thompson did not advise the employer she would quit if the employer did not provide reasonable accommodation.

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.

The weight of the evidence indicates that Ms. Thompson voluntarily quit the employment due to a non-work-related mental health condition. The weight of the evidence fails to establish that the voluntary quit was based on advice Ms. Thompson received from her doctor. At the time of resignation, Ms. Thompson had just provided the employer a note from her doctor that indicated the doctor would evaluate in a month whether Ms. Thompson was able to return to her duties. That documentation, and the prior documentation, provided no indication that the doctor was recommending that Ms. Thompson leave her position. The evidence indicates that it was at the end of the month referenced in the December 2 doctor's note that the doctor released Ms. Thompson to return to work at any other position than the one she left. This recommendation some three weeks after the resignation does not establish that the resignation was based on the advice of the doctor.

The weight of the evidence indicates that Ms. Thompson has at no time been released to return to her previous duties. Ms. Thompson has not returned to the employer to offer her services.

Ms. Thompson's voluntary quit for a non-work-related condition was without good cause attributable to the employer. Accordingly, Ms. Thompson 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. Thompson.

The outcome in this matter would have been the same had the administrative law judge concluded that the condition prompting the quit was related to the employment. The evidence indicates that Ms. Thompson did not request accommodation or tell the employer she would leave if not provided with accommodation.

DECISION:

The Agency representative's April 3, 2009, reference 01, decision is affirmed, with the minor modification that the voluntary quit was for a non-work-related medication condition. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css