IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RAQUEL SEGUNDO
Claimant

JOHN MORRELL & COMPANY
Employer

APPEAL NO. 07A-UI-02741-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/28/07 R: 12
Claimant: Respondent (1)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 9, 2007, reference 02, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 4, 2007. Claimant participated through interpreter Susie Jaquez. Employer participated through Steve Joyce.

ISSUE:

The issue is whether was claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits or if she 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 was employed as a full time laborer from January 6, 2003 until April 18, 2006, when she quit. Dr. Sana, who treated her for pneumonia, told her verbally and in writing she must leave her job because of her pneumonia. She gave the note to Jerry, the office manager, who said that she could reapply for work after six months. She was to remain off work for at least three months or until she was feeling better. She felt better in July or August 2006 but did not go back to ask for her job back because she dedicated herself to staying home with her children until she went to work for Tyson in November 2006. She filed her claim for benefits after being separation from Tyson on January 27, 2007 but did not apply at John Morrell because it is not hiring. Employer did not dispute the details of her testimony or indicate that work was available after her separation or after she filed her claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her 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.

The claimant's treating physician specifically advised her to leave her job because of her illness.

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)(emphasis supplied).

Claimant's treating physician's advice to quit her job was not a disqualifying reason for the separation. Since there was no indication of available work with employer upon her recovery, there was no failure to apply for available or suitable work.

DECISION:

The March 9, 2007, reference 02, decision is affirmed. The claimant voluntarily left her employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw