

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONSUELA A TREMMEL
Claimant

APPEAL NO. 10A-UI-12085-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

OC: 07/04/10
Claimant: Appellant (2)

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Consuela Tremmel filed a timely appeal from the August 18, 2010, reference 01, decision that denied benefits. A hearing was set for October 13, 2010 and the parties were provided with proper notice. Ms. Tremmel was available for the hearing, as was her attorney, Mike Kennedy. Mr. Kennedy had also arranged for Dr. Elizabeth Loeb, M.D., to participate in the hearing. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and was not available for the hearing. The employer had indicated at the time of the August 17, 2010 fact-finding interview that the employer did not wish to contest benefits for the claimant. After reviewing the administrative file materials submitted for and/or generated in connection with the fact-finding interview, the administrative law judge concluded an evidentiary hearing was not necessary and that a decision could be entered based on the contents of the administrative file. Ms. Tremmel consented through counsel to entry of a decision based on the contents of the administrative file.

ISSUE:

Whether the claimant'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: Consuela Tremmel was employed by HCM, Inc., on a full-time basis from 2006 until July 7, 2010, when she voluntarily quit the employment. Ms. Tremmel submitted a written resignation memo to the employer on July 7, 2010. The memo reads as follows:

I am giving my resignation on 7/07/10 due for my mental health. The company has been aware of my disability and has not helped in my situation. The stress of the work environment has caused is affecting [sic] my mental health and keeping my form [sic] performing my daily duties at work and home. The doctor has recommended that I resign for health reason.

Ms. Tremmel suffers from depression and is the mother of a child with special needs. Ms. Tremmel asked her supervisor for accommodations that would allow her to successfully

perform her assigned bookkeeping and collections duties. The requested accommodations were merely that the employer not assign additional duties that took Ms. Tremmel away from her primary duties and that made it impossible for Ms. Tremmel to perform her primary duties in the time allotted. The supervisor balked at Ms. Tremmel's request for leave under the Family and Medical Leave Act and placed unreasonable expectations on Ms. Tremmel with regard to application for leave. The supervisor not only denied reasonable accommodations, but instead increased pressure on Ms. Tremmel. The supervisor expanded Ms. Tremmel's work duties so that it was not possible for Ms. Tremmel to perform her primary duties even by working extended hours. The supervisor demanded perfection. The supervisor subjected Ms. Tremmel to formal discipline. The supervisor made comments to Ms. Tremmel that were abusive in nature. Ms. Tremmel had provided the employer with medical documentation of her condition. The employer was on notice that Ms. Tremmel would likely quit the employment unless the supervisor took a more reasonable approach. Ms. Tremmel's counselor and physician recommended that Ms. Tremmel leave 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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The evidence in the record indicates that Ms. Tremmel's supervisor created a work environment for Ms. Tremmel that greatly aggravated Ms. Tremmel's depression issues. Ms. Tremmel had asked for reasonable accommodations prior to quitting, had provided appropriate medical documentation, and had take action that placed the employer on notice she was about to leave the employment because of the detrimental work environment. The quit was recommended by a physician and counsel. For these reasons, Ms. Tremmel's voluntary quit was for good cause attributable to the employer.

The evidence also indicates that the supervisor went out of her way to create an intolerable and detrimental work environment for Ms. Tremmel that would have prompted a reasonable person to leave the employment. For this reason as well, Ms. Tremmel's voluntary quit was for good cause attributable to the employer.

Ms. Tremmel is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Tremmel.

DECISION:

The Agency representative's August 18, 2010, reference 01, decision is reversed. The claimant voluntarily quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs