

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARCY J TECHEN

Claimant

APPEAL NO. 11A-UI-06359-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOUW MOTOR CO INC

Employer

OC: 04/10/11

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 5, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 8, 2011. Claimant participated. Employer participated by Marion Mouw, President. The record consists of the testimony of Darcy Techen; the testimony of Marion Mouw; and Employer's Exhibit 1.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is new car and truck sales and service dealership located in Sioux Center, Iowa. The claimant was hired in October 2007 as a full-time detailer. The claimant left work on August 30, 2010, for surgery on her left ankle. The claimant did not return to work for the employer after her surgery. The claimant submitted her written resignation on February 11, 2011. The claimant's reason for resigning her position was her continuing problems with her left ankle, particularly twisting and turning. She did not want to risk reinjuring her ankle.

The claimant had injured her left ankle while working for another employer in August 2007. She had surgery in May or June 2008 and then again on August 30, 2010. The employer kept her position open while she recovered from surgery and paid benefits so that she could keep health insurance for her family. Work was available for the claimant at the time she resigned her position.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

Separations from employment for health-related reasons are among the most challenging cases in unemployment insurance law. The proper resolution of these cases requires a determination of which party initiated the separation of employment. If the employer initiates the separation of employment, the claimant is not a voluntary quit. If the claimant does quit, the reasons for the quit must be scrutinized further to determine if the quit was for good cause attributable to the employer.

In this case, the claimant had an injury to her left ankle that pre-dated her employment. There is no evidence that she aggravated her injury during her employment. The claimant missed work in 2008 for surgery and had to have another surgery on August 30, 2010. She never returned to work following the August 30, 2010, surgery. The claimant testified that she and her doctor discussed whether she should return to work given the demands of her detailing job. The claimant decided that the twisting and turning required in her job could cause further damage in her ankle. She concluded that she would rather resign than risk any further injury. There is no evidence that this decision was forced on her by the employer. The employer wanted her to return and kept her job open from August 30, 2010, until her resignation on February 11, 2011.

The administrative law judge concludes that the claimant initiated the separation of employment. She elected to sever the employment relationship. There is no evidence that she did so for good cause attributable to the employer. Under these circumstances, the claimant is not eligible for unemployment insurance benefits. Benefits are denied.

DECISION:

The decision of the representative dated May 5, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css