

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**LORI L WILSON**  
Claimant

**MONTEZUMA MFG DIV OF DIEOMATIC INC**  
Employer

**APPEAL NO. 22A-UI-06970-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/28/21  
Claimant: Appellant (4)**

Iowa Admin. Code r. 871-24.1(113) – Other Separations  
Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

On March 19, 2022, Lori Wilson (claimant) filed a timely appeal from the March 17, 2022 (reference 03) decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on January 28, 2022 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 29, 2022. Claimant participated. Jillian Brockhohn represented the employer. Exhibit A, the claimant's online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KCCO.

**ISSUES:**

Whether the claimant was laid off, discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.  
Whether the claimant's separation was based solely on the claimant's inability to meet the physical requirements of the employment and was an "other separation."  
Whether the claimant has been able to work and available for work since establishing the February 27, 2022 "additional claim."

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Lori Wilson (claimant) began her full-time employment with Williamsburg Manufacturing on January 13, 2022. Williamsburg Manufacturing is affiliated with Montezuma Manufacturing, Division of Dieomatic, Inc., the named employer in interest. The employer hired the claimant to work as a full-time, third-shift production/machine operator. On January 13, 2022, the claimant participated in new hire orientation. On January 16, 2022, the claimant reported for her first shift. The claimant worked three consecutive shifts and last performed work for the employer on the morning of January 19, 2022. The claimant's machine operator duties involved bending, lifting and twisting to pick up parts and place them in a basket.

The claimant called in an absence for the shift scheduled to start on the evening of Wednesday, January 19, 2022. At the time the claimant provided notice of the absence, the claimant told the employer that the work duties were aggravating a previous back injury. The claimant's pre-existing back issue had prompted the claimant to undergo an MRI in September 2021 and prompted the medical provider to prescribe muscle relaxer medication. The claimant describes the pre-existing back issue as a bulging or herniated disc. The claimant understood the nature of the work when she accepted the employment and asserts she believed she could perform the work duties. A reasonable person would conclude the claimant was physically unable to perform the work duties. A reasonable person in the claimant's condition would not have drawn the conclusion that he or she was unable to perform such work and would not have accepted such employment.

The claimant indicates that while doing the work at Williamsburg Manufacturing, she experienced shooting pain down her leg that made it increasingly more difficult for her to perform the work duties. The claimant was taking the muscle relaxing medication and over-the-counter pain medications in an attempt to deal with the pain. The claimant did not disclose to the employer had she was taking the prescription muscle relaxer.

The employer's standard onboarding calls for employees to undergo a pre-employment physical prior to beginning the employment. The claimant's pre-employment physical had initially been set for January 4, 2022. However, the medical clinic the employer uses for pre-employment physicals was "backed up" and twice rescheduled the claimant's physical to a later date. The second reschedule resulted in the physical being set for Friday, January 21, 2022. The employer elected to have the claimant start in the employment without first having the claimant submit to a pre-employment physical. In other words, there was no pre-employment physical and the physical examination the claimant had after she started the employment was not a pre-employment physical.

When the claimant called in for the shift that was to start on Wednesday, January 19, 2022 and end on the morning of January 20, 2022, the claimant referenced that her physical was set for Friday, January 21, 2022. The claimant remained off work pending the physical.

In connection with the physical examination conducted on January 21, 2022, the physician selected by the employer imposed medical restrictions that prevented the claimant from performing the duties she had been hired to perform. The medical restrictions included no lifting, pushing or pulling more than five pounds, no repetitive bending, stooping or twisting, no remaining in the same postural position for prolonged periods, and no extended walking. The employer concluded the employer had not work for the claimant that would meet the medical restrictions imposed in connection with the physical. The employer disagrees with the claimant's assertion that the claimant could have performed work as a forklift operator within her medical restrictions. That work required prolonged sitting and repetitive reaching. A reasonable person would conclude the forklift operator work did not fall within the claimant's medical restrictions.

The employer's human resource manager spoke with the claimant following the physical examination and following the employer's receipt of the medical restrictions. Though the claimant had already commenced the employment, the employer asserted the employer was "rescinding the employment offer" due to the "pre-employment physical." Thus, the employer initiated the separation from the employment.

The claimant had established an original claim for unemployment benefits that was effective March 28, 2021. Weeks after the claimant's separation from Williamsburg manufacturing, the

claimant established an “additional claim” for benefits that was effective February 27, 2022. However, the claimant has made no weekly claims in connection with the additional claim. The claimant continued to receive treatment for her back issue, which led to the claimant undergoing back surgery in March 2022. At the time of the April 29, 2022 unemployment insurance appeal hearing, the claimant was still under the surgeon’s care and had not be released by the medical provider to return to work.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 Iowa Administrative Code rule 871-24.25. The employer has the burden of proving a disqualifying separation. See Iowa Code section 96.6(2).

The claimant separated from the employment for no disqualifying reason. The employer introduced a couple of fictions to this matter. The employer attempts to re-define the meaning of “pre-employment” physical to include an examination *after* an employee commences employment. Though the employer offered employment, and the claimant accepted employment by reporting for work and performing work pursuant to the mutual agreement, the employer used the fiction of “rescinding the offer” when the employer initiated the separation from the employment. The claimant did not voluntarily quit. At no time did the claimant indicate to the employer that the claimant intended to sever the employment relationship. Instead, a doctor hired by the employer determined the claimant did not meet the physical requirements of the employment. The employer placed weight in the doctor’s conclusion and promptly ended the employment. Whether one calls this a discharge, a layoff, or an “other separation,” the outcome is the same. There was no misconduct in connection with the employment. See Iowa Code section 96.5(2)(a) and Iowa Admin. Code section 871-24.32(1)(a)(definition of misconduct). A layoff would not disqualify the claimant for benefits. An “other separation” based on the claimant’s inability to meet the physical requirements of the job would not

disqualify the claimant for benefits. Whether one calls the separation a discharge, layoff or "other separation," the separation does not relieve the employer of liability for benefits. Based on the separation, the claimant would be eligible for benefits, provided the claimant meets all other eligibility requirements. The employer's account may be charged.

Iowa Code section 96.4(3) provides as follows:

96.4 Required findings. An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3, are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)(a) and (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

...

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1) and (5) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Iowa Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m . on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

The claimant cannot receive benefits for the February 27, 2022 original claim date to the present because the claimant has made not weekly claims.

In addition, the weight of the evidence indicates the claimant has been ill, under a doctor's care, and not released to return to work since she established the February 27, 2022 additional claim.

At this point, the claimant would need to establish a new benefit year, commence making weekly claims, be released by a doctor to return to work, and actively and earnestly seek new employment before she may be considered for benefits. The claimant must meet all other eligibility requirements.

#### **DECISION:**

The March 17, 2022 (reference 03), decision is MODIFIED in favor of the claimant as follows. The claimant involuntarily separated from the employment for no disqualifying reason. The separation does not disqualify the claimant for benefits and does not relieve the employer of liability for benefits. They would be eligible for benefits, provided she met all other eligibility requirements. The employer's account may be charged.

The claimant has not made weekly claims, has not been able to work, and has not been available for work since filing the additional claim that was effective February 27, 2022. Benefits are denied effective February 27, 2022.



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James E. Timberland  
Administrative Law Judge

June 7, 2022  
Decision Dated and Mailed

jet/scn