IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GLORIA E SOUTHERN
Claimant

MOWEN CLEANING SERVICE
Employer

APPEAL NO. 07A-UI-03703-S2T

ADMINISTRATIVE LAW JUDGE DECISION

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

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Gloria Southern (claimant) appealed a representative's April 4, 2007 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Mowen Cleaning Service (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 25, 2007. The claimant participated personally. The employer participated by Byron Mowen, Owner, and Cristy Mowen, Secretary/Owner. The claimant offered one exhibit which was marked for identification as Exhibit A. Exhibit A was received into evidence. Robert Johnson, Attorney for the Claimant, observed the hearing.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 3, 2006, as a part-time janitor. The claimant had an allergy to latex. She mentioned this to the employer on her first day of work and thereafter the employer supplied the claimant with non-latex gloves. The claimant's sensitivity to latex became more acute. The claimant was reacting to air born latex. She was treated by a physician and she asked the employer for a different work location. No other location was available.

On February 24, 2007, the claimant almost passed out at work. She telephoned her physician. Her physician strongly advised the claimant to seek other work. On February 26 and 27, 2007, the claimant notified the employer she was sick and could not work. The employer spoke to the claimant's physician. The physician did not advise the employer that the claimant could not continue working. The physician said it was her best guess that the claimant was allergic to latex but the claimant had never been tested due to lack of insurance. On February 28, 2007, the claimant quit work. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

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.

871 IAC 24.26(6)b provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (6) Separation because of illness, injury or pregnancy.
>
> 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 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.

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).

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. *Suluki v. Employment Appeal Board*, 503 N.W.2d 402 (Iowa 1993).

Inasmuch as the claimant did give the employer an opportunity to resolve her issues prior to leaving employment, and the employer failed to correct those legitimate complaints, the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The representative's April 4, 2007 decision (reference 01) is reversed. The claimant voluntarily quit work with good cause attributable to the employer. Benefits are allowed.

_____
Beth A. Scheetz
Administrative Law Judge

_____
Decision Dated and Mailed

bas/css