

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
MARIA ESCARENO GALVAN Claimant WEST LIBERTY FOODS LLC Employer	APPEAL NO. 09A-UI-09676-E2T ADMINISTRATIVE LAW JUDGE DECISION OC: 06/07/09 Claimant: Appellant (4)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 2, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 21, 2009. Claimant participated. Employer called the Appeals Section and stated they did not wish to participate in the hearing. Exhibits A and B were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant injured her back in September 2008. The claimant worked as a molder for the employer in meat production. The work performed by the claimant aggravated her back condition. The claimant had back surgery on March 20, 2009 and was on FMLA leave. The claimant received a return to work slip and presented it to her employer on June 8, 2009. The return to work slip provided that the claimant had restrictions for two weeks. The restrictions were not to work more than three days per week or lift over ten pounds. She also had restrictions on climbing, squatting, pushing and pulling and was not to work more than eight hours. The employer discharged the claimant when she presented these restrictions to the employer. The restrictions were lifted after two weeks.

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.

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 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.

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.

The evidence does not show the claimant intended to terminate her employment relationship, but was discharged. The work the claimant performed aggravated her injury. The claimant returned to work and offered to work and was fired. The claimant was discharged, she did not quit. The evidence does not show misconduct.

Iowa Code section 96.4-3 provides:

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

3. 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 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, 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".

The claimant was limited for the two-week period starting June 7, 2009 through June 20, 2009. She had restrictions for two weeks. Most significant was the limitation of working three days per week for those two weeks and significant weight restrictions. The claimant was not able and available for that two-week period.

The administrative law judge holds that the evidence has failed to show the claimant quit or that she committed misconduct. The claimant was not able and available for a two-week period and has been able and available as of June 21, 2009.

DECISION:

The decision of the representative dated July 2, 2009, reference 01, is modified and reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible after June 20, 2009.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

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