

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATALINA VARGAS
Claimant

APPEAL NO. 07A-UI-03875-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 03/11/07 R: 02
Claimant: Appellant (2/R)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.26-6-b – Work-related Illness or Injury

STATEMENT OF THE CASE:

Catalina Vargas (claimant) appealed a representative's April 12, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Care Initiatives (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 2, 2007. This appeal was consolidated for hearing with one related appeal, 07A-UI-07876-DT. The claimant participated in the hearing. Alyce Smolsky of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Murt Steffen and MaryLou McLain. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on October 28, 1998. She worked full time as a dietary aide in the employer's Marshalltown, Iowa, long-term care nursing facility. Her last day of work was March 7, 2007.

The claimant had suffered a work-related injury to her left shoulder on June 2, 2006. She is left-handed. She had continued working under temporary light-duty restrictions. On March 8, 2007, she returned to the employer's workers' compensation doctor who released her from care with permanent work restrictions of no more than 15 pounds general lifting with her left hand and no more than 5 pounds lifting overhead with her left hand. The claimant delivered this release to the employer either on March 8 or March 9, both of which were days the claimant was not scheduled to work.

The claimant was absent due to other illness on March 10 and March 11. On March 12, she was absent because she had dislocated her right shoulder while off duty. On March 13, she

received follow-up care to her right shoulder and was instructed not to use her right arm for a period of time. She did come into the workplace to discuss her restrictions with Ms. Steffen, the facility administrator. Ms. Steffen reviewed the written job description for the dietary aide position with the claimant, which required frequent lifting of up to 25 pounds and occasional lifting of up to 50 pounds. Ms. Steffen and the claimant agreed that the claimant could not perform the required functions of the job with the permanent restrictions on her left arm. Ms. Steffen indicated that there were no other jobs then available that would meet the claimant's restrictions. As a result, the claimant left the employment.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit, she would not be eligible for unemployment insurance benefits unless it was for 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.

Iowa Code section 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.

The claimant has satisfied the requirements of the rule. The employer was unable or unwilling to provide reasonable accommodation in order to retain the claimant's employment. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Benefits are allowed, if the claimant is otherwise eligible.

An issue as to whether the claimant was otherwise able and available for some work, particularly until such time as the temporary full restrictions on her right arm were lifted, arose as a result of the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's April 12, 2007 decision (reference 01) is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the able and available issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css