

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHY J MOOK
Claimant

APPEAL NO: 06A-UI-09092-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSCEOLA FOODS CORPORATION
Employer

**OC: 07/02/06 R: 03
Claimant: Appellant (2)**

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.26-6-b – Work-related Illness or Injury
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

Kathy J. Mook (claimant) appealed a representative’s September 11, 2006 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on September 26, 2006. The claimant participated in the hearing. Judy Callahan appeared on the employer’s behalf. During the hearing, Employer’s Exhibits One and Two and Claimant’s Exhibits A and B were entered into evidence. 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.

ISSUES:

Did the claimant voluntary quit without good cause attributable to the employer? Is the employer’s account subject to charge?

FINDINGS OF FACT:

The claimant started working for the employer on July 24, 2006. She worked full-time as a production team member at the employer’s Osceola, Iowa, food processing facility. Her last day of work was July 27, 2006.

The claimant has significant degenerative joint disease in the legs. When the claimant was hired, she had come in a different entrance to the plant and was not shown the production floor. When she began working, she discovered that to enter the production floor she had to enter another way and had to go up and down stairs multiple times each day. Her doctor advised that this exacerbated the problem with her legs. She called in ill due to the pain on July 28. She spoke to her supervisor about the problem, but he indicated that the elevators that were across the building from the production floor and could not be used for passengers. Ms. Callahan, the human resources manager, indicated that while the elevators might have been able to be used by the claimant, it was not practical since they were so far from the work area; she acknowledged that there were over 90 steps that would need to be used several times a day

and that the steps were the only practical form of access to the production floor. As a result of the problem of the steps aggravating the condition in her legs, the claimant informed the employer she had to quit.

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 § 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 § 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 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.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began April 1, 2005 and ended March 31, 2006. The employer did not employ the claimant during this time, and, therefore, the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's September 11, 2006 decision (reference 02) is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/cs