

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

BRANDY L DODSON
313 N VANBUREN
OTTUMWA IA 52501

CARGILL MEAT SOLUTIONS
CORPORATION
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-01251-RT
OC: 01-08-06 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.4-3 – Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Brandy L. Dodson, filed a timely appeal from an unemployment insurance decision dated January 30, 2006, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on February 20, 2006, with the claimant participating. Erica Bleck, Human Resources Associate, participated in the hearing for the employer, Cargill Meat Solutions Corporation. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full time production worker from July 11, 2005 until she voluntarily quit on January 13, 2006. On that day, the claimant went into the human resources office and filled out a voluntary quit form. The claimant has never returned to the employer and offered to go back to work. The claimant quit because of certain chest pains she had. On January 2, 2006, the claimant had chest pains at work. but they were not severe and so she continued to work that day. The next day, the claimant's chest was hurting more and she went to work, but she went to the nurse's office and the nurse sent the claimant to the emergency room. The claimant has not gone back to work since. The chest pains were not related to her heart. The claimant eventually learned on February 15, 2006, long after she had quit, that her chest pains were related to ripped cartilage in her breastbone. Although the claimant believes this is related to her employment, there is no specific evidence indicating that such problem is related to her employment. No physician told the claimant that she would have to quit her employment. The claimant did complain to the employer about pain and numbness in her hands in October and November, but the employer accommodated this by moving the claimant to another position causing less stress on her hands and wrists. The claimant consulted nurses two other times in November but in regards to personal matters. The claimant never specifically asked for any particular accommodation other than the move to another position which was granted by the employer. The claimant had bid on that job and it was accepted in the beginning of December of 2005. There is no evidence that the claimant went to the employer and indicated an intention to quit prior to her quit if the employer did not address any of her concerns. If the claimant had provided the employer a physician's note, the employer would have tried to accommodate whatever restrictions the physician had placed on the claimant but the claimant never did so.

Since separating from her employer the claimant has placed no physical kinds of restrictions or training kinds of restrictions on her employment. Her physician has told her simply to choose what she does wisely. Her physician, long after the claimant quit, informed the claimant that maybe the employer was not the best place for her but again did not specifically recommend that the claimant quit even long after the claimant had quit. The claimant has placed no time or day or location restrictions on her availability for work. The claimant is seeking work making two in-person job contacts each week and maintaining a list of those contacts. The claimant has never returned to the employer and offered to go back to work.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because, at relevant times, she is, and was, not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for these reasons.

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.

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.

871 IAC 24.26(6)a 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.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The parties agree, and the administrative law judge concludes, that the claimant left her employment voluntarily on January 13, 2006. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment

with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The only reason given by the claimant for her quit was the pains in her chest, which were not diagnosed at the time the claimant quit. At the time the claimant quit, no physician had instructed the claimant to quit, and apparently even after the claimant quit there has been no specific determination by a physician that the claimant had to quit. Accordingly, the administrative law judge concludes that the claimant has failed to present competent medical evidence showing adequate health reasons to justify termination or that those health reasons were related to her employment. No physician told the claimant either that she had to quit or that whatever medical problems she was encountering were related to her employment until long after the claimant had quit. The ripped cartilage in her breastbone was only diagnosed on February 15, 2006, long after the claimant had quit. There is no competent medical evidence that this condition was directly related to her employment.

There is no evidence that the claimant asked for any specific accommodation which the employer did not provide. The claimant did encounter, in October and November of 2005, some pain in her wrists and numbness in her hands. She reported this to the employer and was moved to another position with less strain on her hands and wrists in early December of 2005. The claimant seemed to argue that she had bid on the job and the employer had not really accommodated the move, but the administrative law judge notes that, for whatever reason, the claimant's position was changed shortly after she had reported to the employer's nurse in November of 2005 that she was having a wrist problem. There is no evidence that the claimant had specifically requested any other specific accommodation. The employer's witness, Erica Bleck, Human Resources Associate, credibly testified that if the claimant would have produced a physician's statement requesting certain accommodations for the claimant, the employer would have attempted to provide those accommodations or meet those restrictions. The claimant never presented such a request by a physician or even by the claimant. Even long after the claimant quit, the claimant testified that her physician had placed no restrictions on her ability to work but had merely told the claimant to choose what she does wisely and that maybe her employment at the employer was not the best place for her. Finally, there is no evidence that the claimant has ever returned to the employer and provided a certification by a licensed and practicing physician that she is recovered from whatever problems she had and that the employer had no suitable comparable work for the claimant. Accordingly, the administrative law judge concludes that the claimant has failed to demonstrate by a preponderance of the evidence that her voluntary quit was with good cause attributable to the employer either for an employment related injury or illness or a non-employment related injury or illness. Therefore, the administrative law judge concludes that the claimant voluntarily left her employment on January 13, 2006, without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, she requalifies for such benefits.

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 administrative law judge concludes that the claimant has the burden of proof to show that she is able, available, and earnestly and actively seeking work under Iowa Code section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that, at relevant times, she is, and was, able, available, and earnestly and actively seeking work. The claimant testified that since separating from the employer and filing for unemployment insurance benefits she has placed no physical restrictions or training restrictions on her ability to work. The claimant further testified that she has placed no time or day or location restrictions on her availability for work. The claimant finally testified that she is earnestly and actively seeking work by making two in-person job contacts each week and is maintaining a list of such job contacts. There is no evidence to the contrary. Accordingly, the administrative law judge concludes that the claimant is able, available, and earnestly and actively seeking work and, as a consequence, she is not ineligible to receive unemployment insurance benefits for those reasons. However, as noted above, the administrative law judge concludes that the claimant is disqualified to receive unemployment insurance benefits because she left her employment voluntarily without good cause attributable to the employer. The administrative law judge specifically notes that the claimant's testimony that her physician has placed no physical restrictions on her ability to work supports the determination above that the claimant left her employment voluntarily without good cause attributable to the employer.

DECISION:

The representative's decision of January 30, 2006, reference 01, is affirmed. The claimant, Brandy L. Dodson, is not entitled to receive unemployment insurance benefits until, or unless, she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer. The claimant is able, available, and earnestly and actively seeking work.

kkf/kjw