IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

THERESA S ALLEE
Claimant

BRIDGE DAVENPORT LP
Employer

APPEAL NO. 20A-UI-06453-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/05/19
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Theresa Allee filed a timely appeal from the June 15, 2020, reference 03, decision that held she was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Allee voluntarily quit on April 14, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on July 23, 2020. Ms. Allee participated. Lyla Erwin, Director of Operations, represented the employer. Exhibits 1 through 5 and A through G were received into evidence.

ISSUE:

Whether Ms. Allee voluntary quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Theresa Allee was employed by Bridge Davenport, L.P. as a full-time Resident Assistant at Country Manner, a memory care community. Ms. Allee began the employment in June 2019 and last performed work in the employment on March 3, 2020. Ms. Allee's duties were somewhat similar to the duties of a Certified Nursing Assistant. Ms. Allee assisted residents with activities of daily living, which included assisting residents in getting out of bed and getting ready in the morning, assisting with showers, and assisting residents getting into and out of wheelchairs. Ms. Allee's job description required that Ms. Allee be able to lift up to 50 pounds. However, lifting residents was not part of the essential duties. Miranda Lewis, Manager/Health Care Coordinator was Ms. Allee's supervisor.

On the evening of March 3, 2020, Ms. Allee sent Ms. Lewis a text message indicating that she was sick, would not be able to report for work the next day, and that she had a medical note. The bulk of the subsequent communication between Ms. Allee and Ms. Lewis was via text message.

On March 4, 2020, Ms. Allee obtained a note from her doctor that indicated she should be excused from work March 4 to March 16, 2020 due to unspecified illness. On March 4,

Ms. Allee sent Ms. Lewis a text message indicating that she had a medical excuse to be off work until March 16, 2020. Ms. Allee also wrote that she was "confused about the process since I don't have a copy of the employee handbook." Ms. Lewis immediately requested the note and Ms. Allee immediately forwarded the note. The note indicated, "Please excuse from work due to illness for the days 3/4/20 to 3/16/20." The note provided no information regarding the nature of the illness. Ms. Lewis told Ms. Allee she could access the handbook online through her "Relias" access.

The health issue Ms. Allee turned out to be non-work related degenerative disc disease and spinal stenosis. During the time Ms. Allee was away from work, she continued to experience lower back pain that her doctor advised could be exacerbated by additional lifting. Ms. Allee's doctor provided a tentative diagnosis of sciatica, but indicated the need for an MRI scan to arrive at an accurate diagnosis. Ms. Allie did not have her MRI until after she separated from the employment. The MRI led to the diagnoses of degenerative disc disease and spinal stenosis.

On March 6, 2020, Ms. Lewis sent Ms. Allee a text message advising Ms. Allee to expect non-FMLA leave request paperwork in the mail. Ms. Lewis added that Ms. Allee would need to have her doctor complete the leave request materials. The employer delayed sending the leave request materials. Ms. Allee did not receive the leave request materials until March 17, 2020, after she had separated from the employment.

On March 13, 2020, Ms. Lewis sent Ms. Allee a text message asking her to confirm that she would be returning to work on March 17, 2020. Ms. Allee responded that she was "trying to work with my doctor on that now." Ms. Allee added "I'm asking for an extension but he's suggesting it's a workmans comp issue. Can you send me the paperwork to start the process?" Ms. Lewis responded as follows:

> Hi Theresa, you mentioned no Workman comp issues originally. The note said illness. I sent and [sic] email and mailed you the information. We will need to set up a time to discuss.

Ms. Allee then forwarded to the employer March 12 correspondence from her doctor, Dr. Packy A. Huettman, Jr., D.O. The doctor's message stated:

> Any lifting can potentially exacerbate the low back. Usually businesses would want a patient's offer restrictions [sic] before they return to work. If I gave you restriction your employer may not allow you to work. We can refill the Flexeril 10 mg. 1 p.o. t.i.d. number 30 with 1 refill. The prednisone we can refill once but it is not a medication we like to use long-term. If you are going to require a long term anti-inflammatory there are other choices. The prednisone is 20mg 1 p.o. b.i.d. for 5 days.

Ms. Lewis responded to the forwarded doctor's note as follows: "Again, you never mentioned anything about Workman comp. you should have seen our recommended doctor if that was the case. I'm reaching out to HR and will be in touch." Ms. Allee replied: "Here I'll make this easy for you. I quit." At the time Ms. Allee sent her quit message, she did not know whether her doctor planned to release her to return to work. At the time Ms. Allee sent her quit message, she had no personal effects at the workplace other than a lunch bag.

Within a few minutes of sending notice to the employer that she was quitting the employment, Ms. Allee received new correspondence from her doctor that prompted her to reconsider. Within a few minutes of sending the text message indicating she was quitting, Ms. Allee called

Ms. Lewis and asked to rescind her quit. Ms. Lewis said it was too late and asserted that she had already forwarded documentation indicating Ms. Allee had quit the employment.

Despite the employer's refusal to allow Ms. Allee to rescind her quit, Ms. Allee forwarded to Ms. Lewis additional correspondence from her doctor. That correspondence pertained to Ms. Allee's request that the doctor complete an AFLAC form in support of Ms. Allee's request for disability insurance benefits. Dr. Huettman wrote:

> I filled out the form for AFLAC, as best I can. We can give her a work excuse to return on the 23rd of March but also we can give her a work restriction where she does not do any lifting over 20 lb and hopefully that will satisfy her work

The AFLAC document indicates, "Patient reports Back Pain due to Repeative [sic] lifting of Patients in February 2020. The document indicates that Dr. Huettman had released Ms. Allee to return to light-duty work effective March 23, 2020. Ms. Allee forwarded Dr. Huettman's email message to Ms. Lewis, along with March 13 medical release that indicated Ms. Allee was released to return to work on March 23, 2020 with a 20-pound lifting restriction.

After Ms. Allee's March 2020 separation from Bridge Davenport, she worked briefly in another employment in April 2020. Ms. Allee has provided a July 14, 2020 memorandum that she obtained from her doctor, that references Ms. Allee's April 17, 2020 separation from that new employment, but that also references matters pertaining to the Bridge Davenport employment. The memo states:

> The patient has not worked since April 17th due to multiple medical conditions. She was working as a CNA, which requires her to lift patients and this requires a lot of strength. Because of repeated lifting she has injured her lumbar spine and was found to have spinal stenosis. The repeated lifting exacerbated the spinal stenosis where she got severe back pain that was debilitating. Because of recurrent back pain and spinal stenosis and the need for her to lift at her job, it was recommended that the patient find a job that was last [sic] physically taxing on her body. Subsequently she has been without a job since April 17th. It is not advisable for her to return to CAN work or any work that requires repetitive lifting of heavy objects. The patient also has moderate COPD that makes it hard for her to do any physical labor. Please contact me if any other questions need to be answered.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(d) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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 Administrative Code rule 817-24.26(6) provides as follows:

> Separation because of illness, injury, or pregnancy.
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> 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.
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> 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.

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).

Iowa Admin. Code r. 871-24.25(37) provides:

> Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
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> (37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive

> academic term or year and the offer of work was within the purview of the individual's training and experience.

The evidence in the record establishes a voluntary quit on March 13, 2020, when Ms. Allee clearly communicated in writing that she was quitting the employment effective immediately. The employer accepted the quit notice, by promptly documenting a separation from the employment. The employer was under no obligation to allow Ms. Allee to rescind the quit.

The weight of the evidence establishes a voluntary quit that was without good cause attributable to the employer. Mr. Allee's health issues were not caused by the employment. Ms. Allee's rash decision to quit the employment was not based on advice from her doctor. Even if the health issues had been caused by or aggravated by the employer, Ms. Allee provided the employer with no opportunity to process that information and no opportunity to determine a reasonable accommodation prior to her message indicating she was quitting the employment. The employer reasonably desired an opportunity to determine how to proceed based on Ms. Allee's belated assertion that her health issues were work-related. Because the evidence establishes a voluntary quit without good cause attributable to the employer, Ms. Allee is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Allee must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The June 15, 2020, reference 03, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective March 13, 2020. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at https://www.iowaworkforcedevelopment.gov/pua-information.

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James E. Timberland
Administrative Law Judge

August 25, 2020__________
Decision Dated and Mailed

jet/scn