

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MISTY A HOWE**  
Claimant

**APPEAL NO. 14A-UI-00736-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AEROTECK INC**  
Employer

**OC: 12/22/13**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit  
Section 96.5(1)d – Voluntary Leaving (Illness/Injury)

**STATEMENT OF THE CASE:**

Misty Howe (claimant) appealed a representative's January 16, 2014, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Aerotek (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 11, 2014. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in October 2013, as a full-time assembler. A forklift driver told the claimant she should not bend over because she did not realize what it did to an old man like him. He also told her to take her shirt off and show him what her mama gave her. The claimant did not say anything to the employer about the comments. The claimant thought her work was making her sick but did not report this to the employer. The claimant went to her physician but the physician did not instruct her to quit her work. On December 14, 2013, the claimant gave notice she was quitting on December 19, 2013. The claimant walked off the job on December 18, 2013, when a supervisor reprimanded her for not understanding how to perform a task. Continued work was available had the claimant not resigned.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). The Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). While the claimant does not need to notify the employer that she intends to quit, she must notify the employer of the condition. The claimant did not notify the employer of the issue with the forklift driver. The claimant subsequently quit due to the conditions.

The second issue that the claimant addresses for her resignation is her medical condition.

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.

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991). The employer must be allowed a chance to correct those conditions before the employee takes the drastic step of quitting employment. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993).

Inasmuch as the claimant did not give the employer an opportunity to resolve her complaints prior to leaving employment, the separation was without good cause attributable to the employer. The claimant did not discuss her condition with it. The employer was unaware of the claimant's medical condition. Benefits are denied.

**DECISION:**

The representative's January 16, 2014, decision (reference 02) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs