**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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| **ARLIE L MCNEAL**<br>Claimant<br><br>**SNELLING EMPLOYMENT LLC**<br>Employer | **APPEAL 19A-UI-10296-DB-T**<br><br>**ADMINISTRATIVE LAW JUDGE DECISION**<br><br>**OC: 11/24/19**<br>**Claimant: Appellant (5)** |

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the December 24, 2019 (reference 02) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on January 22, 2020. The claimant, Arlie L. McNeal, participated personally. Attorney Christopher Spaulding represented the claimant. The employer, Snelling Employment LLC, participated through witnesses James Taylor and Kim Taylor.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a temporary employee. He began working for this company on July 18, 2016. His only job assignment was at Dolls Distributing Company ("Dolls"). This employer is a staffing company; however, it does not place employees at Dolls, rather, Dolls instructs it which workers will be assigned to work there. This employer then handles payroll for those employees placed at Dolls. Claimant had a supervisor at Dolls named Steve. Claimant's job duties at Dolls included moving product from the back room and storage area to put it on displays at four different supermarket locations. Claimant worked two days per week and some Sundays, averaging about 20 hours per week. He reported the hours he worked to this employer.

Claimant suffered from carpal tunnel in both hands, which required surgery. Claimant's last day working on the job at Dolls was on August 10, 2019. He had surgery on both hands and was required to attend four weeks of physical therapy after surgery.

On November 8, 2019, claimant spoke with Steve at Dolls about his employment. He presented Steve with a doctor's release to return back to work effective November 8, 2019 without restrictions. Steve told him that he needed to speak to Tammy Doll and to meet with him on

Monday, November 11, 2019. On Monday, November 11, 2019, claimant again met with Steve. Steve informed him that since he had been doing claimant's job for the past several weeks, he could just continue in that role. Steve reported that there was no longer any work available because business was slow.

Claimant filed a petition with the worker's compensation commissioner regarding his carpal tunnel. The petition was forwarded to this employer in approximately September of 2019.

This employer has a medical leave of absence policy. In July or August of 2019, the claimant contacted Kim and James Taylor to inform them that he wasn't going to be able to work for a period of time because he was going out for surgery. Claimant had spoken with James Taylor to ask about worker's compensation benefits. Mr. Taylor informed the claimant that he needed specific information about the worker's compensation claim and his injury; however, claimant called Mr. Taylor back the next day and informed him he was going to go through his physician at the Veteran's Hospital ("VA") instead. Prior to August 10, 2019, claimant provided no information to the employer about the date of his injury, what the injury included, and what working conditions led to the injury. The claimant did not request any reasonable accommodations prior to August 10, 2019. The claimant did not complete any paperwork requesting a medical leave of absence from the employer. The employer did not hear from the claimant for several weeks and he stopped reporting to his job assignment at Dolls. The employer noticed that claimant was no longer working at his job assignment when he stopped reporting hours in August of 2019.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

The claimant voluntarily quit due to a work-related injury. As such, the claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

Iowa Code § 96.5(1)d provides:

> An individual shall be disqualified for benefits:
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> 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:
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> 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 Admin. Code. r. 871-24.26(6) provides:

> 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.

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.

(emphasis added).

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005). Iowa Code § 216.6 requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987). Claimant has the burden of proof to establish that the injury, illness or aggravation is work-related. *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976).

Claimant credibly testified that the injury was work-related. However, the claimant never notified the employer what his injury was, when it occurred, what job duties led to the injury or what work conditions caused or aggravated his injury prior to him quitting on August 10, 2019. The claimant made no requests for reasonable accommodations and simply told Mr. and Mrs. Taylor that he would be gone from work. Mr. Taylor requested that the claimant provide information to him about the injury and instead of doing so, the claimant told Mr. Taylor he was just going to go to the VA instead. Further, the claimant never received consent of the employer to be absent from work because the claimant never completed any leave of absence paperwork prior to ending his employment on August 10, 2019.

The purpose of the intent-to-quit requirement is to put the employer on notice of what working conditions must be improved in order to keep the employee from quitting. The claimant failed to

comply with Iowa Admin. Code r. 871-24.26(6)b because he failed to notify the employer of the work-related health problem and inform it that he intended to quit unless the problem was corrected or he was reasonably accommodated before quitting. The worker's compensation petition that was filed a month later was insufficient notice to the employer because it was not provided to the employer until after the claimant had already quit. As such, the claimant has failed to establish he voluntarily quit with good cause attributable to the employer pursuant to Iowa Admin. Code. r 871-24.26(6)b. The separation from employment is disqualifying and benefits are denied.

**DECISION:**

The December 24, 2019 (reference 02) unemployment insurance decision is modified with no change in effect. Claimant voluntarily quit the employment without good cause attributable to employer. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his separation date, and provided he is otherwise eligible.

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Dawn Boucher
Administrative Law Judge

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Decision Dated and Mailed

db/scn