

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATIE L SLATER
Claimant

APPEAL NO. 12A-UI-06587-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLANDS FOODS INC
Employer

**OC: 03/11/12
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Farmland Foods (employer) appealed a representative's May 29, 2012 decision (reference 02) that concluded Katie Slater (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 27, 2012. The claimant was represented by Dennis McElwain, Attorney at Law, and participated personally. The employer participated by Becky Jacobsen, Human Resources Manager. The claimant offered and Exhibit A was received into evidence.

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 on November 2, 2005, as a full-time production worker. The claimant injured her right shoulder at work on March 16, 2010. She had surgery on the shoulder in July 2011, and March 2012. The claimant returned to work with restrictions on April 27, 2012. The claimant told the employer each day that the work aggravated her injury and she was in pain. The employer gave her Ben Gay and Ibuprofen. It did not send her to a physician or change her work. The claimant told the employer that the work did not meet her restrictions. On May 9, 2012, the claimant informed the employer again that the work aggravated her injury and she could not perform the assigned work. The claimant quit work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment 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(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).

Inasmuch as the claimant did give the employer an opportunity to resolve her complaints prior to leaving employment, the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The representative's May 29, 2012 decision (reference 02) is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css