

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBI R BUCKNER
Claimant

APPEAL NO. 14A-UI-07152-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

5TH JUDICIAL DISTRICT
Employer

OC: 06/15/14
Claimant: Appellant (1/R)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Bobbi Buckner (claimant) appealed a representative's July 2, 2014, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with 5th Judicial District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for September 9, 2014, in Des Moines, Iowa. The claimant participated personally and through Reginald Buckner, the claimant's husband. The employer participated by Nancy Robinson, Assistant Director; Kristi Skare, Administrative Officer; and Ronice Payne, Personnel Specialist. Lori Gregory, Personnel Officer/Public Service Executive, observed the hearing. The claimant offered and Exhibits A, B, C, and D were 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 June 17, 2005, as a full-time secretary. The claimant suffered from back issues and fibromyalgia. The claimant had two surgeries on her back and reached a settlement with the employer. The claimant brought the employer work restrictions and the employer accommodated those restrictions. The employer provided a cart for the claimant to use but the claimant carried mail in excess of her restrictions rather than use the cart provided.

The claimant continued to work, take time off for her medical conditions, and take medication for those conditions. The medication sometimes made her "foggy" and affected her ability to work. Near the end of 2013, the employer issued the claimant an evaluation with which the claimant disagreed.

The claimant thought she felt animosity from her co-workers and supervisor. She reported to the personnel office in February 2014, that many co-workers and supervisors were creating a hostile work environment. She had a personality conflict with her supervisor. So many people

were named by the claimant that the personnel specialist called in central office. The matter was referred to the Department of Corrections for investigation. The claimant was properly notified that she would not receive information regarding the results of the investigation.

On the morning of June 10, 2014, the employer issued the claimant a written warning for unprofessional conduct. At 11:30 a.m. on June 10, 2014, the claimant asked if she could go to lunch early. The employer had just moved the claimant into new accommodations for her health issues and she was waiting to be fitted correctly for her work space. The employer gave the claimant permission to leave early. The claimant did not return after lunch and did not notify the employer of her absence. Later the claimant sent the employer a text indicating she had an anxiety attack and had to leave work.

On June 11, 2014, the claimant notified the employer by telephone and later by e-mail that she was retiring due to stress effective June 10, 2014. The employer accepted the claimant's resignation. Continued work was available had the claimant not resigned. On June 13, 2014, the claimant e-mailed the employer saying she wanted to amend her separation to a termination due to stress. On June 17, 2014, the claimant e-mailed that she wanted to change her separation to a constructive discharge due to her medical condition. On June 30, 2014, the claimant's nurse practitioner stated, "She is best served, in my opinion, by not working in this job due to her medical conditions."

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.

Iowa Admin. Code r. 871-24.26(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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). 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 claimant argues that she quit due to intolerable or detrimental working conditions.

Iowa Admin. Code r. 871-24.25(21), (22) and (28) provide:

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:

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

(28) The claimant left after being reprimanded.

When an employee quits work because she is dissatisfied with the work environment, has a personality conflict with her supervisor or after having been reprimanded, her leaving is without good cause attributable to the employer. The issues that comprise the claimant's description of an intolerable or detrimental workplace when taken individually are presumed to be without good cause attributable to the employer.

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

Iowa Admin. Code r. 871-24.26(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 had just made new accommodations for the claimant prior to her resignation. Inasmuch as the claimant did not give the employer an opportunity to resolve any new complaints prior to leaving employment, the separation was without good cause attributable to the employer. The claimant did not have a physician's note indicating she had to quit work until after she quit. Benefits are denied.

The issue of whether the claimant is able and available for work is remanded for determination.

DECISION:

The representative's July 2, 2014, decision (reference 01) 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. The issue of whether the claimant is able and available for work is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css