

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA J KILPATRICK
Claimant

APPEAL NO. 07A-UI-00938-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST JANITORIAL SERVICE INC
Employer

**OC: 10-22-06 R: 03
Claimant: Appellant (1)**

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 19, 2007, reference 06, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 12, 2007. Claimant participated. Employer participated through Jerry Driscoll.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a part time janitor from August 15, 2006 until December 15, 2006, when she quit. Claimant has preexisting tendonitis and it bothered her to the point that she “could not lift even a coffee cup” and so could not perform her regular job duties. Employer was aware of a shoulder condition at hire, but claimant said she could do yard work and was not aware of any current complaints. She was not being treated by a medical professional, was not advised to quit her job, and told her supervisor of her tendonitis but did not notify management of her request for accommodation.

REASONING AND CONCLUSIONS OF LAW:

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

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 not give the employer an opportunity to resolve her complaints prior to leaving employment, the separation was without good cause attributable to the employer. Benefits are denied.

DECISION:

The January 19, 2007, reference 06, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw