IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

STEPHANIE F HERSHEY
Claimant

M A MORTENSON CO
Employer

APPEAL NO. 19A-UI-04464-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/04/18
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Stephanie Hershey filed a timely appeal from the May 24, 2019, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the deputy's conclusion that Ms. Hershey voluntarily quit on April 29, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 26, 2019. Ms. Hershey participated. The employer did not participate. The employer registered a telephone number for the appeal hearing and named Gary Ripplinger as the employer's representative for the hearing. At the time of the hearing, Mr. Ripplinger was not available at the registered number.

ISSUES:

Whether Ms. Hershey voluntary quit without good cause attributable to the employer.

Whether Ms. Hershey was laid off.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Stephanie Hershey is a carpenter. Ms. Hershey is a member of a trade union and secures employment through the union hall. Gary Ripplinger is a Jobsite Superintendent for M. A. Mortenson Company and is assigned to an ice arena construction project in Coralville. Mr. Ripplinger hired Ms. Hershey to work as a full-time carpenter on the Iowa City project. Ms. Hershey began the employment on February 11, 2019 and last performed work for the employer on Friday, April 19, 2019. Ms. Hershey's work involved setting up wood supports and forms in preparation for concrete pours into those forms. During Ms. Hershey's employment, the jobsite was especially muddy due to greater than normal rainfall. Toward the end of the employment, Ms. Hershey worked in an area of the jobsite that was particularly muddy. The mud in that area sometimes made it difficult for Ms. Hershey to extricate her foot from the muddy soil.

During Ms. Hershey's shift on Monday, April 15, 2019, her ankle made a popping sound as she was extricating her foot from the mud. Ms. Hershey experienced an onset of pain in her ankle. The employer sent Ms. Hershey home early so that she could rest her ankle. The employer did

not prepare a first report of injury regarding the workplace injury and did not treat the matter as a worker's compensation matter. On April 15, Ms. Hershey sought medical evaluation of her ankle and was diagnosed with a sprained ankle. Ms. Hershey elected not to tell the doctor that she had injured her foot at work. The doctor had an x-ray taken of Ms. Hershey's ankle to confirm there were no broken bones. The doctor told Ms. Hershey that her ankle sprain could take up to two weeks to heal. Though the doctor offered to take Ms. Hershey off work for a week, Ms. Hershey was anxious to return to work. The doctor ended up taking Ms. Hershey off work for just three days. Ms. Hershey provided the employer with the medical note excusing her from work for three days.

Ms. Hershey subsequently elected to return to work earlier than the doctor advised. Ms. Hershey returned to work on Wednesday, April 17. On that day and the next, the employer had Ms. Hershey perform office work so that she could rest her ankle. On Friday, April 19, 2019, the employer had Ms. Hershey return to her regular duties. Ms. Hershey continued to experience pain in her ankle and requested to leave work early. The employer granted Ms. Hershey's request to leave work early that day.

On Monday, April 22, 2019, Ms. Hershey spoke to Mr. Ripplinger about her continued ankle pain and her conclusion that she could not continue to work on the job site. Ms. Hershey was aware that M.A. Mortenson Company would be laying off some carpenters in the near future. The employer had not advised Ms. Hershey that she would be laid off. On April 22, Ms. Hershey asked Mr. Rippling whether she could be laid off at that time. Mr. Ripplinger acquiesced in the request. A doctor had not advised Ms. Hershey to leave the employment.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
> c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
> d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *See Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 871-24.25.

When a claimant leaves employment in anticipation of a layoff in the near future, but work was still available at the time the claimant left employment, the claimant is presumed to have voluntarily quit without good cause attributable to the employer. See Iowa Administrative Code rule 871-24.25(29).

The weight of the evidence in the record establishes a voluntary quit following a work-related injury, not a layoff. The employer took no steps to announce or initiate a layoff of Ms. Hershey and continued to have her regular duties available at the time Ms. Hershey initiated the separation.

Iowa Code section 96.5(1)d provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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:
>
> 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 Administrative Code rule 817-24.26(6) provides as follows:

> 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.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. Ms. Hershey presented no medical evidence to prove that it was medically necessary for her to leave the employment to avoid serious danger to her health. Ms. Hershey could have engaged in further discussion with the employer about evaluation of her work-related injury and could have continued the discussion regarding reasonable accommodation, but elected to separate from the employment instead. Ms. Hershey is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Hershey must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The May 24, 2019, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The effective quit date was April 22, 2019. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs