IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BLANCHARD, ASHLEY, M
Claimant

SALEM LUTHER HOMES
Employer

APPEAL NO. 12A-UI-07447-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/20/12
Claimant: Appellant (1)

Iowa Code Section 96.5(1)(d) – Voluntary Quit

STATEMENT OF THE CASE:

Ashley Blanchard filed a timely appeal from the June 15, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 16, 2012. Ms. Blanchard participated. Penny Jacobsen, Director of Nursing, represented the employer and presented additional testimony through Deb Anthofer, Office Manager and Human Resources Representative. Exhibits One through 15 were received into evidence.

ISSUE:

Whether Ms. Blanchard separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ashley Blanchard was employed by Salem Lutheran Homes as a full-time Registered Nurse from 2008 and last performed work for the employer on March 20, 2012. Penny Jacobsen, Director of Nursing, was Ms. Blanchard's immediate supervisor. Between March 20 and April 2, 2012, Ms. Blanchard was absent from work due to illness, but followed the employer's policy of finding a replacement nurse to cover her shifts.

On April 2, 2012, Ms. Blanchard notified Ms. Jacobsen and the scheduler, Marcia Nelson, that she had been seeing a doctor for anxiety issues, was going through a medication adjustment, and needed to take a leave of absence.

On April 6, Ms. Blanchard spoke to Deb Anthofer, Office Manager and Human Resources Representative to formally apply for leave. Ms. Anthofer told Ms. Blanchard she had not worked enough hours in the previous year to qualify for FMLA leave, but that the employer would approve a 30-day non-paid general leave of absence. Ms. Blanchard provided the employer with medical documentation to support her need for the leave and the employer arranged for other nurses to cover her shifts.

On April 9, 2012, the employer sent Ms. Blanchard a letter that approved her for a 30-day general leave of absence deemed to have begun on April 2, 2012. The employer backdated the letter to April 3, 2012. In the letter, the employer stated, "You will not be guaranteed reinstatement to your position when returning from a General Leave of Absence unless federal, state or local laws require otherwise." The letter requested medical certification materials and indicated the employer would request a full medical release before Ms. Blanchard would be allowed to return to the employment. The letter directed Ms. Blanchard to contact her supervisor if the leave needed to continue beyond 90 days.

Ms. Blanchard was not released to return to work at the end of her 30-day leave and did not return to work at that time. The employer was aware that Ms. Blanchard had a follow-up medical appointment set for May 3, 2012. On May 7, the scheduler contacted Ms. Blanchard and asked whether Ms. Blanchard had a new doctor's note. Ms. Blanchard indicated that she had asked the doctor for new medical excuse. Later that day, Ms. Jacobsen and Ms. Anthofer telephoned Ms. Blanchard to repeat the request for an updated doctor's note concerning the May 3 medical appointment. Ms. Blanchard agreed to provide one. The employer told Ms. Blanchard that the employer needed an updated medical excuse each time Ms. Blanchard saw the doctor. Ms. Blanchard indicated her next appointment was set for May 16. The employer reminded Ms. Blanchard that the employer reserved the right to fill her position prior to her return, but that Ms. Blanchard could reapply once she had been released by her doctor to return to work. Ms. Blanchard asked whether she could just go on-call instead. Ms. Anthofer told Ms. Blanchard that the employer would not allow her to switch back and forth to on-call status, especially at a time when the employer did not need an on-call employee. The employer agreed to extend Ms. Blanchard's approved leave to May 16.

On May 9, Ms. Blanchard provided the employer with a medical excuse written on a prescription pad by a nurse practitioner. The note, dated May 8, stated "Ashley needs to be off work until further notice."

On May 15, Ms. Blanchard went to the workplace and asked whether she still had a job. Ms. Jacobsen told Ms. Blanchard that it was getting harder to fill her hours, that overtime was high, and that without knowing how long Ms. Blanchard would be gone, the employer would most likely have to fill the position. Ms. Jacobsen reaffirmed that the employer would wait until after the doctor's appointment the next day to decide what to do about her position.

On May 16, Ms. Blanchard provided the employer with another note from the nurse practitioner written on a prescription pad. The note said, "Ashley is unable to work the night shift at this time but can return to work." Ms. Blanchard had previously been assigned to the overnight shift, from 6:00 p.m. to 6:00 a.m. On May 16, Ms. Jacobsen told Ms. Blanchard that the employer did not have day shift work available. Ms. Blanchard said that her doctor wanted her not to work the night shift hours due to concerns about Ms. Blanchard's sleep patterns. The request was no longer based on the medication adjustment. Ms. Blanchard asked whether she could work 6:00 p.m. to 10:00 p.m. The employer told Ms. Blanchard that the employer could only make one such shorted shift available per week. Ms. Blanchard told Ms. Jacobsen that the one evening shift was not enough. Ms. Blanchard requested to go on call. The employer said there were no on-call hours available. Ms. Blanchard said she would think about the one-evening shift per week proposal.

On May 24, the employer posted an opening for a part-time L.P.N. position with work hours consisting of 6:00 p.m. to 6:00 a.m. two nights per week and one 6:00 p.m. to 10:00 p.m. shift per week. The employer had told Ms. Blanchard on May 16 that the employer would be posting

the opening and that Ms. Blanchard could apply for the position. The position was open only to current employees.

On May 25, Ms. Jacobsen and Ms. Anthofer contacted Ms. Blanchard to discuss the position that had been internally posted the day before. Ms. Blanchard asked whether the posted hours were all that the employer had available. Ms. Jacobsen reaffirmed that there were no day shift hours available. The employer offered Ms. Blanchard the posted hours and Ms. Blanchard responded that technically she could not work those hours due to her doctor's note. Ms. Blanchard then requested a letter from the employer setting forth the status of her employment. Ms. Anthofer told Ms. Blanchard that the letter would indicate that the employment was terminated due to her not being able to return from her general leave of absence. On May 29, 2012, the employer mailed the letter that indicated the employer deemed the employment terminated effective May 25, 2012 due to Ms. Blanchard's inability to work the hours associated with her night shift position.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

Workforce Development rule 817 IAC 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.
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> 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.
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> 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.

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 871 IAC 24.25.

The weight of the evidence establishes that Ms. Blanchard was on an approved leave of absence until May 16, 2012, when she advised the employer that she would not be returning to her previous work hours. Ms. Blanchard provided the employer with a bare-bones note from a nurse practitioner. Ms. Blanchard provided no medical documentation to further explain the need to not work the overnight hours or indicating that Ms. Blanchard would suffer serious harm if she returned to overnight work hours. Ms. Blanchard's actions amounted to a voluntary quit. Though the decision not to return to the employment was based on advice from a medical professional, there is insufficient evidence to establish the existence of a medical condition that made it *necessary* for Ms. Blanchard to leave the employment to avoid serious harm. The employer was not obligated to provide Ms. Blanchard with a complete change in shift. Ms. Blanchard has not returned to the employment, after recovering from non-work-related mental health issue, to offer to return to the position she previously held.

Ms. Blanchard voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Blanchard is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Blanchard.

DECISION:

The Agency representative's June 15, 2012, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs