

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENISE HUSTON
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL 19A-UI-06991-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/11/19
Claimant: Appellant (2)

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 29, 2019 (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on September 26, 2019. The claimant, Denise Huston, participated personally. The employer, The University of Iowa, did not participate. Claimant's Exhibit A was admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full time as a certified medical assistant. Claimant was employed from September of 2012 until August 12, 2019, when she voluntarily quit. Julie Pierce was claimant's immediate supervisor. This employer operates a hospital. Claimant's job duties included caring for patients and frequently involved lifting, stooping and twisting while transferring patients.

In 2017, claimant suffered from a non-work related injury which required surgery. In January of 2019, she required surgery a second time for the same injury. Claimant was off work in January of 2019 to recover from surgery. After returning to work from medical leave, the claimant was unable to complete the physical requirements of her job duties. She requested light duty work as an accommodation from the employer; however, she was told that none was available. In an April 22, 2019 email, the claimant explained to the employer that she would have to quit if she was not accommodated. See Exhibit A.

Claimant's last day physically worked on the job was on April 17, 2019. Claimant began a medical leave of absence due to her previous non-work related injury, pursuant to her physician's recommendation. See Exhibit A.

Claimant has not recovered from her medical condition at this time. She is unable to perform the job duties of certified medical assistant but can perform office work or other sedentary work, which she has done in the past. Because claimant's medical leave was expiring and she was unable to return to work in her position as a certified medical assistant, she tendered her written resignation from employment on August 11, 2019 in order to have preferential hiring rights with this employer.

Claimant's physician opined that claimant has back and leg pain that is aggravated that worsens with physical activity demands of her required work duties. See Exhibit A. Because her work duties include pushing, pulling and lifting, these activities aggravate her condition and potentially may lead to another disc herniation. See Exhibit A. Claimant's physician recommended work that requires light duties, lifting under 10 pounds, and no repetitive bending, pushing or pulling. See Exhibit A. There was no light duty work within these restrictions that the employer had available to the claimant. No worker's compensation claim was filed by the claimant regarding the initial injury or aggravation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Claimant voluntarily quit by tendering her verbal resignation to the employer. As such, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

A notice of intent to quit for reasons other than work-related health problems is not required. *Hy-Vee, Inc.*, 710 N.W.2d 1 (Iowa 2005). In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). Iowa Code § 216.6 requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987). Claimant has the burden of proof to establish that the injury, illness or aggravation is work-related. *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976).

Iowa Code § 96.5(1)d 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. 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 Admin. Code r. 871-24.25(35) provides:

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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

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 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.

(emphasis added).

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

The claimant has not established that the injury was caused by the employment but did establish that the medical condition was aggravated by the work duties, which are permanently prohibited by the medical restrictions in Exhibit A. As such, she has met her burden to prove that the aggravation is work related. Furthermore, the treating physician specifically advised claimant not to return to work unless it was light duty work. Claimant informed the employer that she would have to quit unless she was reasonably accommodated.

Because the aggravation of the injury is considered work-related for the purposes of unemployment insurance benefits only and the treating physician has released the claimant to return to work, with restrictions, the claimant has established her ability to work. Further, because the employer had no work available and was not willing to accommodate the work restrictions, the separation from work is not disqualifying. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The August 29, 2019 (reference 01) unemployment insurance decision is reversed. Claimant voluntarily quit the employment with good cause attributable to employer. Unemployment insurance benefits are allowed, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs