

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VILMA C ROMERO
Claimant

IMAGE INC
Employer

APPEAL 15A-UI-07573-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/22/15
Claimant: Respondent (1)**

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The employer filed an appeal from the June 23, 2015, (reference 04) unemployment insurance decision that allowed benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on July 21, 2015. Claimant responded to the hearing notice instructions but was not available at the number provided when the hearing was called and did not participate. Employer participated through owner Tammy Huinker.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a home cleaner trainee from November 12, 2014, and was separated from employment on December 10, 2014. During training she tripped, fell on the sidewalk and fractured her wrist. She had surgery and was released to return to work with restrictions on February 25, 2015. The employer declined to accommodate the work restrictions and filled her job. The parties settled the workers' compensation claim and paid a cash settlement and paid her medical bills on April 13, 2015. She has not presented a release without work restrictions. There has been no further communication.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment for no disqualifying reason.

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.

Since the claimant offered to return to work from the work-related injury with restriction and no work was available, the separation was with good cause attributable to the employer.

DECISION:

The June 23, 2015, (reference 04) unemployment insurance decision is affirmed. The claimant voluntarily left the employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/mak