

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRISA R KINNEY
Claimant

APPEAL NO. 10A-EUCU-01086-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALMER COMPANIES INC
PALMER CONSULTING
Employer

OC: 03/07/10
Claimant: Respondent (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Palmer Consulting (employer) appealed a representative's November 2, 2010 decision (reference 02) that concluded Terrisa Kinney (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 5, 2011. The claimant participated personally. The employer participated by Laurie Wellendors, Senior Staffing Consultant.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 23, 2009, as a full-time processor. On August 3, 2010, the claimant fell at work and broke her ankle. The claimant went to the employer's physician and she was restricted from working. On August 26, 2010, the physician indicated the claimant should not work until her next appointment, September 20, 2010. On September 3, 2010, the employer sent the claimant a 30-day cancellation of workers' compensation because the claimant did not think she could return to work on September 20, 2010.

On September 20, 2010, the claimant was unable to get to the employer's doctor. The office was far away from the claimant and she could not drive due to the injury. She called the employer and the employer gave her the workers' compensation office to find a new physician but did not offer help with transportation. The workers' compensation carrier did not respond to the claimant's requests for a new physician. The claimant called back on or about September 21, 2010, and left messages for both. Neither responded to her request. On October 4, 2010, the employer terminated the claimant for failure to appear for work after September 20, 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer

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.

871 IAC 24.25(36) 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 § 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 § 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:

(36) The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

The claimant was injured while at work. The claimant's injury was the reason for her separation from employment. Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. Shontz v. Iowa Employment Security Commission, 248 N.W.2d 88 (Iowa 1976). The claimant's separation from employment was caused by her work-related injury and, therefore, good cause is attributable to the employer. The claimant is qualified to receive benefits provided she is otherwise eligible.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because she was an eye witness to the events. The employer's witness was not an eye witness.

DECISION:

The representative's November 2, 2010 decision (reference 02) is affirmed. The claimant's separation from employment was caused by her work-related injury and, therefore, good cause is attributable to the employer. The claimant is qualified to receive benefits, provided she is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs