

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY A SANDEFFER
Claimant

APPEAL NO. 10A-UI-03455-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATION**
Employer

**OC: 02/07/10
Claimant: Appellant (2)**

Section 96.5-1-d – Voluntary Quit for Medical Reasons
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Kimberly Sandeffer (claimant) appealed a representative's February 26, 2010 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Cargill Meat Solutions (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 20, 2010. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant is denied unemployment insurance benefits because she voluntarily quit work without good cause attributable to the employer. In addition, whether the claimant is able and available for work.

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 30, 2008, as a full-time saw operator. The claimant took Family Medical Leave (FMLA) for period surrounding the birth of her son on September 9, 2009. She returned to work in November 2009, but had problems with her work environment. The employer gave her a right-handed saw knowing she was left-handed. By the end of the month the claimant became very emotional about cutting the heads off five-month-old piglets. She took more FMLA from December 1, 2009, through January 30, 2010. On February 1, 2010, the claimant returned to work. The blood, heads, and smell made the claimant extremely emotional. On February 5, 2010, the claimant returned to her physician. The physician thought the claimant should try to work three days per week. On February 8, 2010, the claimant tried to return but had an anxiety attack at work. The claimant kept the employer informed of her condition. The physician advised the claimant to stop her current work but the claimant was not restricted from any other work. On February 9, 2010, the employer told the claimant it had no other jobs for the claimant. The claimant quit work.

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 section 96.5-1 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.

871 IAC 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 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.

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. *Suluki v. Employment Appeal Board*, 503 N.W.2d 402 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. *Polley v. Gopher Bearing Company*, 478 N.W.2d 775 (Minn. App. 1991).

Inasmuch as the claimant did give the employer an opportunity to resolve her complaints prior to leaving employment, the separation was with good cause attributable to the employer. Benefits are allowed.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she is.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness she is considered to be unavailable for work. The claimant had no restrictions on working for another employer. The claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 26, 2010 decision (reference 01) is reversed. The claimant voluntarily quit work with good cause attributable to the employer. She is able and available for work. The claimant is eligible and qualified to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css