

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNNE A SCHUTTPELZ
Claimant

APPEAL NO. 08A-UI-03818-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

**OC: 03-16-08 R: 01
Claimant: Respondent (1)**

Section 96.5-1-d – Voluntary Leaving – Illness/Injury

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 8, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 13, 2008. The claimant did participate and was represented by Dennis McElwain, Attorney at Law. The employer did participate through, Brian McAvoy, Telesales Manager I, and was represented by Judy Barry of Barnett Associates. Observing but not participating in the hearing was Brian Martin. Claimant's Exhibit A was received. Employer's Exhibit One was received.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a customer care agent full time beginning May 14, 2007 through February 28, 2008 when she voluntarily quit.

The claimant began her job by participating in an approximate three-month long training period. On May 25, 2007 while in the training period, the claimant sustained a work-related knee injury. She continued her training period and eventually completed the training and began working on the telephones on or about August 2, 2007. She continued learning on the telephone until October 10, 2007 when she was taken off work to have surgery on her left knee as a result of her work-related injury of May 25. She returned to work at the end of November or beginning of December 2007 having been gone almost as long as she had worked after the training period. When she returned to work she could not remember how to perform all of the functions of the job as she had only been working at the job for two months before she was taken off work for seven weeks for surgery. The claimant asked for additional training or to be put through the training period again because she was just not able to remember all the information she had not used in seven weeks. Because the employer was so busy, they refused to put the claimant

back into additional training and were not able to give her all of the training she requested to perform the job. The claimant became so upset of her inability to correctly perform the job she began to have panic attacks and sought medical counseling and medication from Clayton J. Toddy, Psy.D., clinical psychologist.

The claimant saw Dr. Toddy for five treatment sessions between January 17, 2008 and February 27, 2008. During those treatment sessions Dr. Toddy recommended that claimant quit her job as neither psychotherapy nor medication management was alleviating her work-related stress and panic attacks.

The claimant told her Supervisor Brian McAvoy that she could not handle the job any longer when she requested additional training. She took a medical leave of absence for which Dr. Toddy completed and provided the employer with a disability service mental health functional capacity evaluation in January and February 2008. Dr. Toddy's report clearly put the employer on notice as the issues that the claimant was having with panic attacks and stress were being aggravated by work stress. The claimant requested accommodation of additional training was not granted.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment 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.

Iowa Code section 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 24.26(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.

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Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. *Shontz v. IESC*, 248 N.W.2d 88 (Iowa 1976). Where illness

or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. *Raffety v. IESC*, 76 N.W.2d 787 (Iowa 1956).

Claimant was not required to give notice of his intention to quit due to an intolerable, detrimental or unsafe working environment. *Hy-Vee, Inc. v. Employment Appeal Bd.*, No. 86/04-0762 (Iowa, Nov. 18, 2005). The treating physician has verified in writing that the advice given the claimant to quit this job was related to a work aggravation of the medical condition. The claimant met the requirements of *Suluki v. EAB*, 503 N.W.2d 401 (Iowa 1993) by notifying management of the employer of the physician's advice to quit due to the medical condition caused or aggravated by the work. She also sought, in vain, additional job training that would accommodate the condition. Benefits are allowed.

DECISION:

The April 8, 2008, reference 01, decision is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css