

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDY L STOCKER
Claimant

APPEAL NO. 09A-UI-15086-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 09/06/09
Claimant: Appellant (1-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Cindy Stocker filed a timely appeal from the October 6, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 9, 2009. Ms. Stocker participated. Linda Grindle, Office Manager/Human Resources Representative, represented the employer. Exhibit A was received into evidence during the hearing. The hearing record was left open so that the employer could provide exhibit materials the employer attempted to provide to the Appeals Section on October 19, 2009. The employer submitted the materials within an hour of the conclusion of the hearing and they were received as Exhibit One. A copy of Exhibit One will be provided to the claimant. Within 15 days of the mailing date of this decision, the claimant may submit a written response to the materials or request that the record be reopened and the administrative law judge will consider whether it is appropriate to reopen the record.

ISSUE:

Whether Ms. Stocker's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cindy Stocker was employed by ABCM Corporation as a full-time Certified Nursing Assistant from January 6, 2009 until March 27, 2009, when she voluntarily quit. Ms. Stocker's immediate supervisor was Deb Karr, Director of Nursing. During the short period of the employment, Ms. Stocker was absent from work a considerable number of days—more than a month. Immediately after she started the employment, Ms. Stocker was absent from January 7 to February 2, purportedly due to her brother-in-law's illness. Ms. Stocker was then absent from February 13 to February 24 due to a respiratory illness. Ms. Stocker was then absent on March 6 and 10 due to the respiratory illness.

On March 27, Ms. Stocker met the Director of Nursing in the hallway. Ms. Stocker handed her employer-issued back support to Ms. Karr. Ms. Stocker told Ms. Karr she was having difficulty breathing and that she was quitting immediately. Ms. Stocker had not provided the employer with any medical documentation that indicated she needed to quit the employment to avoid harm. Ms. Stocker had not asked the employer for accommodations so that she could continue

in the employment. Ms. Stocker's quit was not based on a doctor advising her to leave the employment. Ms. Stocker told the Director of Nursing that she intended to apply for disability benefits.

There had been no change in the conditions of Ms. Stocker's employment and the employer continued to have full-time work available to Ms. Stocker.

REASONING AND CONCLUSIONS OF LAW:

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.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

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.

871 IAC 24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The weight of the evidence fails to establish that Ms. Stocker had a medical condition that made it necessary to leave the employment. Ms. Stocker provided no medical documentation to support that assertion and did not even argue that issue at the hearing.

The weight of the evidence also fails to establish a voluntary quit in response to a change in the conditions of the employment. The weight of the evidence—including the employer's testimony, the work schedules in Exhibit One and the payroll records in Exhibit One—indicates there was no change in the conditions of the employment, including no reduction in work hours. What the evidence indicates instead is employment of a short duration, employment from which Ms. Stocker was absent almost half the time, and employment in which Ms. Stocker had a correspondingly small investment.

The weight of the evidence indicates that Ms. Stocker voluntarily quit for personal reasons and not for good cause attributable to the employer. Accordingly, Ms. Stocker is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Stocker.

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".

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Workforce Development administrative records indicate that Ms. Stocker was claiming and receiving full unemployment insurance benefits the entire time she was employed by this employer, including when she was off work due to personal illness or her brother-in-law's illness. This matter will be remanded to the Claims Division on the issue of whether Ms. Stocker met the work ability and availability requirements of Iowa Code section 96.4(3) from the January 6, 2009 start of the employment onward, and whether Ms. Stocker has been overpaid unemployment insurance benefits.

DECISION:

The Agency representative's October 6, 2009, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs