

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANDRA L HOLMES
Claimant

APPEAL NO. 14A-UI-02875-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 02/09/14
Claimant: Appellant (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Diandra Holmes filed a timely appeal from the March 10, 2014, reference 01, decision that disqualified her for benefits in connection with a January 24, 2014 separation from the temporary employment firm. After due notice was issued, a hearing was held on April 8, 2014. Ms. Holmes participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibit A was received into evidence.

ISSUE:

Whether Ms. Holmes separated from the employment for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Express Services is a temporary employment agency. On January 21, 2014, Diandra Holmes started a full-time temporary work assignment through Express Services at Mail Service in Urbandale. Ms. Holmes last performed work in the assignment on Friday, January 24, 2014. Ms. Holmes was pregnant at the time she started the assignment. Ms. Holmes had incomplete information about the nature of the assignment when she accepted it. The assignment turned out to be more physically taxing than Ms. Holmes had anticipated. The assignment involved repetitive movement and repetitive lifting of five to ten pounds.

On Monday, January 27, 2014, Ms. Holmes notified Express Services that she would be absent from the assignment so that she could go to a medical appointment. Ms. Holmes went to her doctor. Ms. Holmes' doctor recommended that she seek sedentary work due to swelling that she was experiencing and the repetitive lifting involved in the new work assignment. On January 28, 2014, Ms. Holmes contacted Express Services and asked whether the employer had another assignment for her. Ms. Holmes told the employer that her doctor had advised that

the assignment at Mail Service was not a good fit for her. The employer told Ms. Holmes that she would have to finish out the week in the assignment before she could be considered for other assignments. Ms. Holmes declined to do that and commenced her search for other employment.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record indicates that Ms. Holmes voluntarily quit the employment due to a medical condition, pregnancy, that was aggravated by the assignment at Mail Service. Ms. Holmes notified the employer of her doctor's advice that she seek different employment. Ms. Holmes asked for an accommodation. The employer declined to provide a reasonable accommodation and instead told Ms. Holmes she would be required to perform additional work in the same assignment. It was under those circumstances that that Ms. Holmes elected to separate from the assignment and the employment. Ms. Holmes voluntarily quit the employment for good cause attributable to the employer. Accordingly, Ms. Holmes is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The claims deputy's March 10, 2014, reference 01, decision is reversed. The claimant voluntarily quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been able and available for work since she established her claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs