

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**SHARLEEN K SMITH
2363 RIVERSIDE BLVD
SIOUX CITY IA 51109**

**PECH OPTICAL CORP
PO BOX 2820
SIOUX CITY IA 51106**

**Appeal Number: 04A-UI-12199-CT
OC: 09/26/04 R: 01
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Sharleen Smith filed an appeal from a representative's decision dated November 5, 2004, reference 01, which denied benefits based on her separation from Pech Optical Corporation (Pech). After due notice was issued, a hearing was held by telephone on December 15, 2004. Ms. Smith participated personally and Exhibits A through D were admitted on her behalf. The employer participated by Karen Lindberg, Human Resources; Randy Haaske, Night Lab Manager; and Shelly Stevenson, Finish Night Team Leader.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Smith was employed by Pech from October 17, 2002 until March 24, 2004 as a full-time laborer. She was off work from November 18, 2003 until March 23, 2004 because of a medical condition, which was considered to be work-related. She had flexor tendonitis of the left hand. Ms. Smith saw Dr. Mark Wheeler on March 22, at which time she was released to return to work effective March 23. She was to work four hours each day the first week, eight hours per day the second week, and then her normal ten hours per day the third week. Dr. Wheeler felt she would have reached maximum medical improvement when seen for her next appointment in three to four months following March 22.

Ms. Smith returned to work on March 23 and worked less than three hours before advising the employer that she was experiencing pain in her hand. Her supervisor referred her to the human resources department. When Ms. Smith spoke to Karen Lindberg in human resources, she told her that she could not perform her job. Ms. Lindberg reminded her that she had been released by the doctor to return to work. Ms. Smith did not ask whether there was other work she could perform and the employer did not offer any accommodation. Because of the limited use of her hand, the employer did not have any other work Ms. Smith would have been able to perform. Therefore, she quit. She did not see her family doctor regarding her hand and did not return to see Dr. Wheeler until June. Ms. Smith was not advised by any doctor to leave the employment. Continued work would have been available if she had not quit.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Smith was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Smith quit because she could not perform her job due to pain in her hand. However, she was not advised by a doctor to quit. Given the fact that Dr. Wheeler had released her to return to her same job, the administrative law judge must presume that he did not feel the work was injurious to her medical condition. A voluntary quit for medical reasons is disqualifying unless on the advice of a doctor. See Taylor v. Iowa Department of Job Service, 362 N.W.2d 534 (Iowa 1985).

Ms. Smith had been away from her job for four months when she returned on March 23. She worked less than three hours before complaining of pain. Given the amount of time she had been away from the job, it does not appear that she gave herself a fair opportunity to become readjusted to the work. The evidence of record does not establish good cause attributable to the employer for the quit. Accordingly, benefits are denied.

DECISION:

The representative's decision dated November 5, 2004, reference 01, is hereby affirmed. Ms. Smith voluntarily quit her employment for no good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/smc