IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RHONDA TUCKER-THOMAS
Claimant

MENARD INC
Employer

APPEAL NO: 13A-UI-09945-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/04/13
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 26, 2013, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on September 25, 2013. The claimant participated in the hearing with Attorney Mary Hamilton. Brian Krysl, General Manager, participated in the hearing on behalf of the employer. Claimant's Exhibits A through E were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time hardware salesperson for Menard Inc. from January 7, 1991 to August 6, 2013. She voluntarily quit her job because she was in a great deal of physical pain and believed the employer was refusing to follow her work restrictions.

The claimant fell in the employer's parking lot December 5, 2011, and had been under a physician's care since shortly after that date due to the injuries she sustained in the fall. She had attended physical therapy on a few occasions and was trying that treatment again in early August 2013. She was scheduled to work from 12:00 p.m. to 10:00 p.m. August 5, 2013, and left shortly after 2:00 p.m. to attend physical therapy. That session ended shortly after 3:00 p.m. but the claimant did not return to work or contact the employer to state she would not be back. Consequently, the employer met with the claimant August 6, 2013, to ask why she had been leaving early the last few weeks and asked her to provide doctor's notes and anything she might have that would be beneficial to making their working relationship more positive. The employer had not received an updated list of restrictions since the beginning of this ordeal for the claimant. The claimant became upset at being questioned, stated her health was more important than her job and walked out. The claimant then directed her attorney, Mary Hamilton,

to notify the employer she would not be returning to work for Menards and Ms. Hamilton did so in a letter to the employer's local human resources manager, Joel Ehrig, dated August 13, 2013 (Claimant's Exhibit A). General Manager Brian Krysl denied knowledge of Ms. Hamilton's letter and maintains he believed the claimant was simply on a leave of absence and would be returning to work when her condition improved.

The claimant saw her worker's compensation carrier's doctor in March 2012 and was given different restrictions but did not get a copy of those restrictions nor provide a copy to the employer. On October 9, 2012, the claimant saw the physician again and her restrictions included, among other items, that she not work more than eight hours per day, could only spend one hour walking, no lifting over 20 pounds, no pushing or pulling, etc. The claimant did not ask for a copy of her new restrictions and did not provide a copy to her employer. She testified she thought the attorneys involved in the worker's compensation case would provide a copy, although the employer testified it never received a copy with any updated restrictions for the claimant. Consequently, she was scheduled to work more than eight hours some days, felt other employees, including her department manager, would not help her with tasks on her "to do" list that were outside the scope of her restrictions, and her pain was increasing, all of which contributed to her decision to quit because she felt the employer was not following her work restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without 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.

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 from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2.

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).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660(1993). Aside

from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005). (Emphasis added).

While the claimant was clearly experiencing severe pain from a work-related fall, she quit her job because she did not believe the employer was abiding by the restrictions established by her worker's compensation doctor. She never provided the employer with a copy of her new restrictions after her last two doctor's visits, however, and although she assumed the employer was aware of the restrictions through its attorneys, that was not the case. The claimant had a responsibility to notify the employer when her restrictions changed or if she felt they were not following the terms of her restrictions. The claimant failed to do so. Therefore, she did not give the employer an opportunity to cure the situation and benefits must be denied.

DECISION:

The August 26, 2013, reference 01, decision is affirmed. The claimant voluntarily left her employment without 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 benefit amount, provided she is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/pjs