

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAVONDA D JOHNSON
Claimant

WESTAR FOODS INC
Employer

APPEAL 17A-UI-11267-DB
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/01/17
Claimant: Appellant (1)

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 24, 2017 (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting work. The parties were properly notified of the hearing. An in-person hearing was held on November 21, 2017 in Des Moines, Iowa. The claimant, Shavonda D. Johnson, participated personally. The employer, Westar Foods Inc., was represented by Tim Speir and participated through witnesses Daniel Sexton and Daniel Kenne.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was hired as a full-time employee on May 17, 2017. She was a shift manager at the employer's fast food restaurant. Her job duties included managing staff and operating the store.

On October 2, 2017 claimant tendered her verbal resignation to Mr. Kenne, who was the District Manager. Claimant had become ill with the flu on Sunday, October 1, 2017 and felt that it was best for her to quit since she was not able to work due to illness.

During the course of her employment, claimant suffered from a work-related injury to her back. She had sought medical treatment for the injury, however, did not have any restrictions from her physician that restricted her ability to work full-time. Claimant also suffers from PTSD and depression. She sought medical treatment for these issues. Claimant's PTSD and depression were not work-related illnesses. Claimant did not have any working restrictions issued to her from her physician regarding her PTSD and depression.

Claimant decided to voluntarily quit because she did not believe she could perform her job duties to the best of her ability. There was continuing work available to her had she not quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

As a preliminary matter I find that the claimant voluntarily quit and was not discharged from employment.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(35) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits."

White v. Emp't Appeal Bd., 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant has not established that the medical condition was work related or that treating medical personnel advised her to quit the job, as is her burden. Nor did she request accommodation from the employer before quitting. Accordingly, the separation is without good cause attributable to the employer. Benefits are denied.

DECISION:

The October 24, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit her employment without good cause attributable to employer. Claimant is denied unemployment insurance benefits until such time as she has worked in and has been paid wages for insured work equal to ten times her weekly benefits amount, provided she is otherwise eligible. The employer's account will not be charged.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs