IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MARTA M MAGANA Claimant **TYSON FRESH MEATS INC** Employer	**APPEAL 17A-UI-06128-NM-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/21/17** **Claimant: Appellant (2R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 9, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on June 29, 2017. The claimant participated and testified with the assistance of a Spanish language interpreter from CTS Language Link. The employer did not participate. Claimant's Exhibit A was received into evidence.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a production line worker from November 7, 2011, until this employment ended on March 31, 2017.

In 2016 claimant suffered a back injury. There is an ongoing dispute between the claimant and the employer as to whether this injury was work-related. Claimant provided documentation from her treating medical professional indicating it is that professional's opinion that claimant's injury was aggravated by her work. (Exhibit A). Claimant was given lifting restrictions. The employer was able to accommodate claimant's restrictions initially, but in August 2016 she was placed on leave due to these restrictions. Claimant's doctor has advised her that these restrictions are permanent. Claimant remained on leave until March 31, 2017, when she received a letter from the employer. The letter stated that claimant either needed to contact them with additional medical documentation within ten days or she would be discharged. Claimant contacted the employer and explained to them that she did not have any new or additional documentation from her doctor. Claimant testified she never intended to quit, but has not been allowed to return to work because of her restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment for no disqualifying reason.

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:
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> 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;
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> (b) Obtain certification of release for work from a licensed and practicing physician;
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> (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.

Iowa Admin. Code r. 871-24.26(6)b 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:
>
> (6) Separation because of illness, injury, or pregnancy.

> 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.

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id*.

Here, claimant was initially off work after experiencing a back injury. Claimant was subsequently given lifting restrictions, which are still in place. The claimant was placed on leave in August 2017 because the employer was either not willing or able to accommodate her restrictions. Claimant was contacted by the employer on March 31, 2017 asking her to contact them with additional medical information or she would be terminated. Claimant did not have any new or additional medical documentation that had not already been provided to the employer and called to explain as much. Claimant's provided medical documentation indicating her condition is permanent and it is the provider's medical opinion that her condition was aggravated by her work.

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005). Here, the employer was aware of claimant's restrictions, that these restrictions were permanent, and that she could not continue working unless the restrictions were accommodated. Iowa Code § 216.6 (previously 601A.6) requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also, *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987).

Some employees with restrictions will be disabled and thus protected by the Iowa Civil Rights Act and the American's with Disabilities Act. Although disabled these employees may still be "able and available" if reasonable accommodation by employers would make them so. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993). Consider a disabled employee who presents restrictions and asks for reasonable accommodation. The employer (in this example) ignores its legal obligation and refuses to accommodate the employee. Under the alternate rule, the employee would be treated as quitting by demanding recognition of the right to accommodation. And yet if this same employee presents the same restriction to subsequent employers the employee under *Sierra* could remain "able and available." The employee is not automatically be deemed to be unduly restricted from employment under Iowa Admin. Code r. 871-24.22(2)m. Thus, in this example the employee would not be adversely affected by the need for reasonable accommodation in any but the first job. Again this result is unfair and seems to serve no policy. *Id.*

The applicable law and precedent led the Court to conclude that an employee who presents valid restrictions inconsistent with their employment duties should not be treated as quitting by that fact alone and recognized that the claimant did not just present restrictions, but also stayed off work because the work the employer offered did not accommodate the restrictions. Nevertheless, the claimant did not intend to quit, but intended to remain on leave until released to do the work offered. The separation occurred when the employer decided it could no longer wait for further recovery. The separation is thus either a termination or lay off, but not for misconduct, or another separation. Neither type of separation was disqualifying. Claimant provided credible testimony that she made clear to the employer she was willing and able to work within her restrictions. Since the claimant offered to return to work from the work-related injury within her restriction and no work was available, the separation was with good cause attributable to the employer.

Furthermore, while a claimant must generally return to offer services upon recovery, subparagraph (d) of Iowa Code § 96.5(1) is not applicable where it is impossible to return to the former employment because of medical restrictions connected with the work. See *White v. Emp't Appeal Bd.*, 487 N.W.2d 342 (Iowa 1992). Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. *Shontz v. Iowa Emp't Sec. Comm'n*, 248 N.W.2d 88 (Iowa 1976). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. *Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787 (Iowa 1956). Here, claimant's testimony and medical documentation support her claim that her symptoms are aggravated by her working conditions. Because claimant's medical condition was aggravated by the working conditions, the decision not to return to the employment according to the treating medical professional's advice was not a disqualifying reason for the separation. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The June 9, 2017, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left the employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits withheld on this basis shall be paid.

REMAND:

The issue of whether claimant is able to and available for work is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Nicole Merrill
Administrative Law Judge

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Decision Dated and Mailed

nm/scn