IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SHAWNA M MEHAFFY
Claimant

NORDSTROM INC
Employer

APPEAL NO. 16A-UI-05367-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/13/16
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Shawna Mehaffy filed a timely appeal from the May 3, 2016, reference 02, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that she had voluntarily quit on April 13, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 25, 2016. Ms. Mehaffy participated. Marcy Schneider of Equifax represented the employer and presented testimony through Jill McDowell, Human Resources Representative. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-05366-JTT. Department Exhibits D-1, D-2 and D-3 were received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO and KCCO.

ISSUE:

Whether Ms. Mehaffy 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: Shawna Mehaffy began her full-time employment with Nordstrom Inc. in June 2014 and last performed work for the employer on December 7, 2015. Up to that time, Ms. Mehaffy worked as a customer return processor at the employer's fulfillment center in Cedar Rapids. Her work hours were 2:00 p.m. to 10:00 p.m., Monday through Friday. Her immediate supervisor was Assistant Manager Rick Scott. Heather Childs was the fulfillment center manager. Ms. Mehaffy suffers from migraine headaches. In December 2015, Ms. Mehaffy requested a medical leave of absence. Ms. Mehaffy also requested short-term disability benefits through the employer's third-party administrator, Sedgwick. Ms. Mehaffy's physician, neurologist Jill Miller, provided medical documentation to Sedgwick in support of the application for short-term disability benefits. Sedgwick, initially approved Ms. Mehaffy for disability benefits for the period of December 8, 2015 through the middle of March 2016. The employer approved Ms. Mehaffy for a medical leave of absence for that same period. Ms. Mehaffy's leave of absence occurred in the context of her discussion with Dr. Miller about factors that contributed to onset of migraine headaches and ways to decrease Ms. Mehaffy's susceptibility to migraine headaches. Dr. Miller

identified lack of sleep as a contributing factor. In addition to working until 10:00 p.m., Ms. Mehaffy had school aged children and needed to get up early to get the children off to school. Dr. Miller suggested that Ms. Mehaffy see whether the employer would amend her work hours to provide an earlier quit time than 10:00 p.m. Dr. Miller did not advise Ms. Mehaffy to quit the employment.

In January 2016, Ms. Mehaffy told Mr. Scott that when she came back to work she would not be able to work until 10:00 p.m. because she had to get up early with her kids. Also in January, Ms. Mehaffy applied for a different position within the company, but did not get the position.

At the beginning of March 2016, while Ms. Mehaffy was still on the approved leave of absence, Ms. Childs telephoned Ms. Mehaffy. Ms. Childs told Ms. Mehaffy that the work flow was slow, that the employer would not need Ms. Mehaffy's services in the middle of March when she was scheduled to return from her leave of absence, and that Ms. Mehaffy should continue on leave until the employer recalled her to the employment. Dr. Miller submitted medical documentation to Sedgwick in support of extending the short-term disability benefits through April 17, 2016. Sedgwick approved Ms. Mehaffy for additional short-term disability benefits. Ms. Mehaffy and the employer treated the additional month off work as an agreed-upon extension of the leave of absence.

At the beginning of April 2016, Ms. Childs telephoned Ms. Mehaffy to let Ms. Mehaffy know that work had picked up and the employer was ready for her to return to her work duties. Ms. Mehaffy told Ms. Childs that she was unable to immediately return to the employment because her doctor had taken her off work through April 17, 2016 and Sedgwick had approved short-term disability benefits through April 17, 2016. During the contact at the beginning of April, Ms. Childs and Ms. Mehaffy agreed that Ms. Mehaffy would return to work on April 18, 2016.

During the contact in early April 2016, Ms. Mehaffy told Ms. Childs that she wanted to change her work hours when she returned to work. Ms. Childs told Ms. Mehaffy that they would need to defer that discussion until closer in time to Ms. Mehaffy's expected return date.

As Ms. Mehaffy's April 18, 2016 return to work date drew near, Ms. Mehaffy notified Ms. Childs that she could not work until 10:00 p.m. when she returned to work. Ms. Mehaffy proposed two modified work schedules. Ms. Mehaffy proposed that her regular evening shift be shortened to six hours so that she could keep the 2:00 p.m. start time and leave at 8:00 p.m. That proposed schedule would result in Ms. Mehaffy working 30 hours per week instead of her previous full-time schedule. Ms. Mahaffey proposed in the alternative that she be allowed to change her start time to 9:00 a.m. and continue to work eight-hour shifts. Ms. Mehaffy knew that the employer allowed some employees to work adjusted work hours and that the employer made such decisions on a case-by-case basis. Ms. Childs rejected Ms. Mehaffy's proposed changes to the work schedule and told Ms. Mehaffy that she needed her to work 2:00 p.m. to 10:00 p.m.

When Ms. Childs rejected Ms. Mehaffy's proposed change in work hours, Ms. Mehaffy asked Ms. Childs whether other departments could provide work for her that matched her request for adjusted work hours. Ms. Mehaffy specifically referenced the employer's call center. Ms. Mehaffy was interested in moving to the call center because it would provide a quieter environment than the fulfillment center. Ms. Childs told Ms. Mehaffy that she should contact the recruiting department to see whether the call center had work available for her.

Ms. Mehaffy did not return to her fulfillment center work duties on April 18, 2016 at the end of the approved leave of absence. Ms. Mehaffy contacted the recruiting department and learned

that the call center did not expect to have any openings until June 2016. The employer continued to have Ms. Mehaffy's fulfillment center work available. Ms. Mehaffy had continued off work.

Ms. Mehaffy established a claim for unemployment insurance benefits that was effective March 13, 2016. Ms. Mehaffy made two weekly claims for benefits and then discontinued the claim after Sedgwick approved her request for additional short-term disability benefits. Ms. Mehaffy established an additional claim for benefits during the week that began April 17, 2016. The additional claim followed the employer's refusal to adjust the work hours and Ms. Mehaffy's decision not to return to the employment under the previously established work hours.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.22(2)(j) provides as follows:

> Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.
>
> j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.
>
> (1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.
>
> (2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.
>
> (3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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 weight of the evidence establishes that Ms. Mehaffy was on an approved leave of absence until April 17, 2016. The parties had agreed to a leave of absence through that date. The parties did not agree to extend the leave of absence. Instead, Ms. Mehaffy elected to separate from the employment, rather than return to the previously established work schedule. In other words, Ms. Mehaffy voluntarily quit effective April 18, 2016.

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.

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.

The evidence in the record fails to establish that it was medically necessary for Ms. Mehaffy to quit the employment. Ms. Mehaffy's doctor did not advise Ms. Mehaffy to quit the employment. Ms. Mehaffy had worked the 2:00 p.m. to 10:00 p.m. shift from the start of the employment without need for accommodations. An employer has an obligation to provide disabled employees with reasonable accommodations that would allow disabled employees to continue in the work. See Sierra v. Employment Appeal Board, 508 N.W. 2d 719 (Iowa 1993). However, the evidence fails to establish that Ms. Mehaffy's migraine headache rose to the level of a disability. The request for a permanent change in the work hours constituted a request for a substantial change in the conditions of the employment and went beyond a request for reasonable accommodation. The employer was not obligated to agree to substantial changes in the conditions of the employment. The administrative law judge also notes that the sleep

quantity concern could also have been addressed through changes to Ms. Mehaffy's morning routine, which had nothing to do with the employer.

Ms. Mehaffy voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Mehaffy is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The May 3, 2016, reference 02, decision is affirmed. Effective April 18, 2016, the claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

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