

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETTY L SHERRILL
Claimant

APPEAL NO. 12A-UI-12947-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGEWAY TRAINING SERVICES NFP
Employer

**OC: 04/22/12
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.26(6)b – Employment Separation/Job Related Illness
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated October 25, 2012, reference 02, that held the claimant voluntarily quit without good cause on September 25, 2012, and benefits are denied. A hearing was held on November 28, 2012. The claimant participated. Cindy Lotz, HR Coordinator, and Darlene Morrison, Production Center Manager, participated for the employer. Claimant Exhibit A and Employer Exhibit 1 were received as evidence.

ISSUES:

The issue is whether the claimant voluntary quit with good cause attributable to the employer.

The issue is whether the claimant was able and available for work

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds that: The claimant worked as a full-time production employee for the employer beginning September 23, 2011 and last worked on September 24, 2012. Claimant received the policies of the employer in an employee handbook. She did not review it. The policy allows for reasonable accommodations to enable employees with disabilities to work. The employer has a problem resolution process where an employee first addresses a work concern with a supervisor and if not satisfied may proceed to take it to human resources or the company president.

Claimant has suffered from asthma since her teenage years. During the course of employment claimant experienced two asthma attacks brought on by dust in the work environment. She did ask her supervisor to move from her job as a package sealer to another work area. The request was denied.

On September 25 claimant left a doctor note dated the same day at work. The note states she is able to work but advising her not in a dust environment that exacerbates her asthma. Claimant offered the note as her statement she was quitting. Prior to this time, she did not give any advance notice to the employer she was quitting due to the dust work environment causing breathing issues.

The employer had a work environment building horse brushes and combs where claimant could have been moved to in order to continue employment. This is where the claimant requested work but she failed to follow the employer policy to make this an accommodation.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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.

The administrative law judge concludes claimant voluntarily quit without good cause attributable to the employer due to a health problem effective September 25, 2012, because she failed to give advance notice with medical information to the employer requesting an accommodation in order to continue employment.

The claimant a serious health issue (asthma) that was aggravated by her dust work environment. She failed to read the employer policy in order to make a proper request to move to a different work area. She did not provide the employer with a medical statement her health

condition required a dust free work environment in order to give the employer an opportunity to provide an accommodation that was available.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes there is no availability disqualification, because claimant's health condition is limited to a dust environment. She is otherwise able and available for gainful employment.

DECISION:

The decision of the department representative dated October 25, 2012, reference 02, is affirmed. Claimant voluntarily quit without good cause on September 25, 2012. The claimant is able and available for work. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css