

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN E ROBERTS
Claimant

APPEAL NO. 16A-UI-04326-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PECH OPTICAL CORP
Employer

OC: 03/27/16
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated April 11, 2016, reference 01, which denied unemployment insurance benefits finding the claimant voluntarily quit work without good cause attributable to the employer. After due notice was provided, a telephone hearing was held on April 28, 2016. Claimant participated. Participating as a witness for the claimant was Mr. Gary Roberts, the claimant's spouse. The employer participated by Ms. Barbra Michaelsen, Human Resource Representative.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Susan Roberts was employed by Pech Optical Corp. from October 20, 2003 until March 22, 2016 when she resigned from employment. Ms. Roberts was employed as a full-time finish department employee and was paid by the hour.

Ms. Roberts had been off work due to a non-work-related automobile accident and had exhausted Family Medical Leave Act time that was available to her.

Ms. Roberts conferred with her husband and concluded that because her Family Medical Leave time had been exhausted, additional absences would count against the claimant on the employer's no fault attendance policy and Ms. Roberts would be subject to termination in the future. Ms. Roberts concluded that it was in her best interests to quit employment, prior to any decision on the part of the company to discharge her, because by doing so, she would be eligible to be re-hired in the future. If the claimant were discharged, a re-hire would not be available to her. At the time that the claimant chose to leave employment the employer had made no decision about her continued employment with the company.

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 § 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.

In the case at hand, the claimant chose to leave her employment with Pech Optical Corp. due to a non-work-related injury. The claimant had used up all Family Medical Leave Act time that was available to her and anticipated that she might be discharged in the future if she continued to be absent and the absences caused her to exceed the permissible number of attendance points allowed under company policy. To avoid being discharged in the future, Ms. Roberts made a personal decision to quit employment in hopes she would be eligible for re-hire in the future when she was released by her doctor to resume employment.

While Ms. Roberts' reason for leaving was undoubtedly a good choice reason from her personal viewpoint, it was not attributable to the employer as required by the provisions of the Iowa Employment Security Law. The claimant anticipated that she might be discharged in the future and quit to preserve her employment history so that she could potentially be re-hired by the company in the future when released by her doctor.

Accordingly, the claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated April 11, 2016, reference 01, is affirmed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs