

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TESSA VARNER
Claimant

APPEAL NO: 11A-UI-12901-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIAMOND JO WORTH LLC
Employer

**OC: 08/21/11
Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Tessa Varner (claimant) appealed an unemployment insurance decision dated September 27, 2011, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Diamond Jo Worth, LLC (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Mason City, Iowa on November 7, 2011. The claimant and her husband Daniel Varner participated in the hearing. The employer did not participate in the hearing. Claimant's Exhibits A through I were admitted into evidence. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time cocktail waitress in 2008. She sustained a work-related injury on January 27, 2011 when she broke her tibia. The injury was not initially diagnosed even though the claimant sought medical treatment. Her doctor put her in an air cast and gave her restrictions of icing her shin bone two to three times an hour. The claimant's husband Daniel Varner also works at the casino and he spoke with Linda in human resources, who said they were ready for the claimant to report to work and had an office available for her. When the claimant returned to work on February 8, 2011, there was no office ready for her and no accommodations had been made. She was required to work outside her restrictions and returned to her doctor on February 9, 2011 who restricted her to no weight bearing. The claimant's care was subsequently transferred to a podiatrist, which is when the fracture was first discovered.

The claimant was placed in a cast on March 16, 2011 and she was subsequently diagnosed with a blood clot in her leg. She was placed on a blood thinner but stopped taking it due to an

allergic reaction and began taking aspirin. The claimant had ankle surgery on May 24, 2011 and was released with restrictions on June 2, 2011. She worked intermittently until she went to the emergency room on July 14, 2011 for bad knee pain, which was diagnosed as a sprain.

At the emergency room, Dr. Benjamin Woods notified the claimant that she had been diagnosed with a blood clotting abnormality. Dr. Walter Bate had prepared a letter for the claimant dated July 11, 2011 which explained it as a mutation in her prothrombin 20210a gene but the claimant had not received the letter yet. Dr. Woods provided a work release form which restricted the claimant from working around smoke. He stated that smoking and the exposure to secondhand smoke is very dangerous to her, especially in light of the very recent deep venous clot in her leg.

The claimant provided the employer with the non-work-related medical restriction on July 15, 2011. She had missed some work due to illness but had not called in due to confusion over her work restrictions, and consequently, received attendance points for those days. The employer was willing to accommodate the claimant's work-related restrictions and had continuing work available but the claimant was concerned that she would be fired once she was released to regular duty. She called the employer on July 18, 2011 and in a conference call spoke with Linda Woolm, Jeff Petterson and Kim Pang. The claimant asked whether she would still have a job after her release from her worker's compensation restrictions and the employer could not provide her with an answer. The claimant had obtained a worker's compensation attorney and called him to ask for his advice. Her attorney recommended she quit and find another job, which is what she did. The claimant was released from her worker's compensation restrictions on August 11, 2011 but continues to be under the non-work-related restriction of not working around smoke.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

Iowa Code § 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 24.25(3) 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 § 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 § 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:

(3) The claimant left to seek other employment but did not secure employment.

The claimant quit her employment because she suspected that she would be fired once she was released to return to work without any work-related medical restrictions. No decisions had been made as to the claimant's continued employment since she had not yet been released to return to work without work-related restrictions at the time she quit.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

DECISION:

The unemployment insurance decision dated September 27, 2011, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css