

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN D WOOD**  
Claimant

**APPEAL NO. 11A-UI-08619-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEARS ROEBUCK & CO**  
Employer

**OC: 05/29/11**  
**Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 20, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 21, 2011. Claimant Susan Wood participated personally and was represented by Attorney Jerry Jackson. Bridget Clark, Human Resources Manager, represented the employer and presented additional testimony through Jeremiah Jackson, Team Manager. Exhibits One, A and B were received into evidence.

**ISSUE:**

Whether Ms. Wood separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Susan Wood was employed by Sears as a full-time customer service representative from 2007 until May 29, 2011 she performed her last shift and then voluntarily quit pursuant to the terms of a worker's compensation settlement.

Ms. Wood's employment required heavy computer use. At the beginning of 2010, Ms. Wood was diagnosed with De Quervain's syndrome in her right hand. Ms. Wood is right-handed. Ms. Wood underwent a surgical procedure to address the De Quervain's syndrome and returned to work without taking time off. Ms. Wood continued to perform her regular duties, but for a while used only her left hand for typing. Ms. Wood was subsequently released to return to work without restrictions. This was Ms. Wood's status when she separated from the employment. Ms. Wood had changed departments so she could perform a slighter lesser amount of computer use, but continued to use computers at work on a regular basis.

Ms. Wood negotiated her worker's compensation claim to settlement with the assistance of an attorney. In exchange for \$20,000.00, Ms. Wood agreed, among other things, to voluntarily resign from the employment and not seek further employment with Sears.

Prior to entering into the settlement agreement and separating from Sears, Ms. Wood continued to perform her regular duties. Ms. Wood did not complain to her supervisor regarding any pain in connection with the work or ask for any accommodations. No doctor had recommended that she leave the work.

Ms. Wood has not seen a doctor about her hands or wrists since April 2010. As of February 2010, the worker's compensation doctor suspected Ms. Wood might suffer from bilateral carpal tunnel syndrome, but had not made a formal diagnosis. An objective test designed to test for carpal tunnel syndrome came back negative for the diagnosis.

#### **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.

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.

While there is no Iowa case law on point, other states have addressed the situation of a voluntary quit in the context of a worker's compensation settlement. In Edward v. Sentinel Management Co., 611 N.W.2d 366 (Minn. App. 2000), the claimant resigned as part of a worker's compensation settlement package. The Minnesota court denied benefits, noting that the claimant could have continued working while pursuing his claim. The evidence in the case established that the claimant could still perform his work and was doing so while the negotiations continued. The court found the situation analogous to a person negotiating for early retirement while work was still available. By contrast, in Larson v. Michigan Employment Sec. Com'n, 140 N.W.2d 777 (Michigan App. 1966), the Michigan court allowed benefits to a severely injured worker who could not perform his former duties and for whom the alternatives were remaining employed with no income or resigning in order to receive income. Iowa administrative law judges follow these lines of analysis and make similar distinctions.

The weight of the evidence in the record establishes that Ms. Wood continued to be able to perform her regular duties without accommodations, but voluntarily quit as part of the worker's compensation settlement. No doctor had recommended that she leave the employment or indicated that she could not perform regular duties. See Iowa Code section 96.5(1)(d).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Wood voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Wood 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 paid to Ms. Wood.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The Agency representative's June 20, 2011, reference 01, decision is reversed. 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.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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