

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY M LOTT
Claimant

APPEAL NO. 08A-UI-07306-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DUKE AND KING ACQUISITION CORP
BURGER KINGS**
Employer

**OC: 07/08/08 R: 04
Claimant: Appellant (1)**

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 4, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on August 26, 2008. Claimant participated with Thomas Lott. Employer participated through Cindy Slininger. Claimant's Exhibits A through D were received.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time cleaning and food preparation worker at the Brady Street, Davenport location (3.49 miles from her home) beginning in October 2007. On April 18, 2008 she complained to Slininger about a coworker, Nick, but could not offer any details. She offered to schedule claimant opposite the coworker and claimant agreed. On April 21, 2008 she quit to take a medical leave of absence for a few months and said she would bring a doctor's note upon her return to work. (Claimant's Exhibit A) Employer asked her for medical documentation to provide to the office and on June 10 she provided a letter from Alex Cobb, "Worship and Leadership Minister" indicating she was "involved in the counseling ministries of our church" but did not refer to a licensed medical care provider. (Claimant's Exhibit D) Employer again explained that since she did not provide medical documentation in April as requested that she was considered to have quit but offered her a job at the Brady Street or Rockingham Road, Davenport (3.48 miles from her home) locations. Claimant wanted to work at the West Kimberly Road, Davenport location (2.2 miles from her home) where her sister worked but was told that location was fully staffed. Employer made the same offer at hearing noting that Nick quit by the end of April, but claimant declined since she does not have transportation by automobile, taking the bus is too stressful (although her medical release does not limit bus transportation), and due to her asthma she cannot walk or ride her bicycle beyond

one or two miles from her home according to her medical release dated June 16, 2008. (Claimant's Exhibit B)

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 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.

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.

871 IAC 24.25(1), (6), (21), (30), (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 § 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:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

(6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

(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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). Claimant was not required to give notice of his intention to quit due to an intolerable, detrimental or unsafe working environment if employer had or should have had reasonable knowledge of the condition. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Claimant's lack of reasonable communication with employer was the primary source of the separation. She failed to explain how Nick had allegedly harassed her and did not provide employer with medical documentation within a reasonable length of time after requested on April 21, 2008. Thus, employer was reasonable in considering the separation voluntary. Claimant's decision to quit was not based upon a good-cause reason attributable to the employer. Employer's offer of other available work, including her former job, upon her release was also eminently reasonable. Benefits must be denied.

DECISION:

The August 4, 2008, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs