

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY MCCALL

Claimant

APPEAL NO: 14A-UI-09128-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRST RESOURCES CORP

Employer

OC: 08/03/14

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 26, 2014, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on September 23, 2014. The claimant participated in the hearing. Valerie Sample, Human Resources Director and Kim Shaw, Program Manager, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time service provider for First Resources from March 20, 2013 to August 8, 2014. She voluntarily left her employment following a non-work-related injury, with restrictions imposed, when she did not want to accept the light duty positions offered by the employer.

On July 29, 2014, Program Manager Kim Shaw received a text message for an employee stating she was going to be filling in for the claimant. Ms. Shaw asked why and the employee said the claimant hurt her back outside work Sunday, July 27, 2014, and could not work. The claimant had also called in to report her absence.

Ms. Shaw called the claimant July 29, 2014, and asked what was going on because if an employee switches shifts she is required to notify the shift supervisor. The shift supervisor must be aware of the shift switch and approve it. The claimant stated she had a pre-existing disc injury to her back that flared up and she needed to go to her doctor because she was in pain. The claimant called later that day and said her physician took her off work for the rest of the week. She told the employer she had a note excusing her from July 29 through August 6, 2014, and it asked that she bring it in that day or the next day and the claimant brought her note to the employer July 30, 2014. Ms. Shaw spoke to the claimant on the phone later that day and the

claimant stated that because she was not getting better, her doctor was probably going to impose weight and lifting restrictions. Ms. Shaw stated they should meet with human resources because the claimant's restrictions would change her job duties. They scheduled a meeting between the claimant, Ms. Shaw and Human Resources Director Valerie Sample for August 4, 2014. At that time the claimant said she did not know what her long-term restrictions would be or whether they would be indefinite so the parties concluded the claimant could not return to her previous position. The employer told the claimant to check with her doctor or the specialist she saw in the past to find out whether her restrictions would be temporary or indefinite. The employer then discussed all of the different positions the claimant could do with her restrictions. On July 30, 2014, the claimant brought in another note excusing her from July 29 through August 6, 2014. On August 4, 2014, the claimant received another doctor's note excusing her from August 1 through August 8, 2014. The employer's plan was for the claimant to secure the note with clarifications about her restrictions. The employer did have other positions that did not require lifting but the claimant stated she did not want to leave the position she was in currently. The new position offered different hours and some different duties but it was the same type of work and paid the same wages. The claimant was upset and crying and the employer told her it wanted to work with her. When the employer left the meeting the employer believed they had an understanding and the claimant would get a clarification regarding her restrictions from her physician and would get back to the employer. The next time the employer heard from the claimant was when it received her Notice of Claim from Iowa Workforce Development.

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant aggravated a previous non-work related back injury July 27, 2014, and was placed on lifting restrictions not to exceed 50 pounds. Her job required that she lift more than 50 pounds. The employer was more than willing to place her in another position that would not violate her restrictions but the claimant was not interested in any other jobs other than the one she held at the time she further injured her back. Because the claimant's injury was not work-related the employer was not required to offer her a different position or light duty work but chose to do so in an effort to keep the claimant as an employee and allow her to continue working while she healed. While the employer was waiting for the claimant to provide additional

information so it could place her in a position accommodating her restrictions, it received her Notice of Claim from Iowa Workforce Development and correctly concluded the claimant voluntarily quit her job. The claimant has not demonstrated that her leaving was due to unlawful, intolerable, or detrimental working conditions as those terms are defined by Iowa law. Therefore, benefits must be denied,

DECISION:

The August 26, 2014, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs