

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PENNY J HUDSON**  
Claimant

**APPEAL NO. 08A-UI-06164-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON RETAIL DELI MEATS INC**  
Employer

**OC: 06/01/08 R: 02  
Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit  
Section 96.4-3 - Able to and Available for Work

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated June 30, 2008, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on July 21, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

**ISSUE:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Was the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant worked as a production laborer for the employer from June 15, 2002, to May 29, 2008. She was diagnosed with a heart condition in 2007. In January 2008, she had a defibrillator implanted to treat her heart problems. She was unable to work and was receiving disability benefits.

The claimant's doctor released her to return to work without restrictions at her request on May 29, 2008. The claimant attempted to work on May 29, 2008, but found the physical demands of the job difficult, particularly the flights of stairs she had to go up to get to work area.

The claimant resigned from her job on May 29, 2008, because she believed she was unable to do the work due to her medical condition. No doctor advised the claimant to quit her employment or notified her that the job with the employer was a health hazard. There is no medical evidence that her job caused or aggravated her heart condition.

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 1, 2008. As of that date, the claimant was able to work full time in a less physically

demanding job such as working as a cashier in a store. She has been actively seeking such work since applying for benefits.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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.

The unemployment insurance law provides that an individual is qualified to receive benefits if she: (1) left employment because of illness, injury, or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that she needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but her regular work or comparable suitable work was not available. Iowa Code § 96.5-1-d.

The unemployment insurance rules provide that a claimant is qualified to receive benefits if compelled to leave employment due to a medical condition attributable to the employment. The rules require a claimant: (1) to present competent evidence that conditions at work caused or aggravated the medical condition and made it impossible for the claimant to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related medical condition and that the claimant intends to quit unless the problem is corrected or condition is reasonably accommodated. 871 IAC 24.26(6)b.

The claimant is not qualified under either Iowa Code § 96.5-1-d or 871 IAC 24.26(6)b. When she left employment on May 29, it was not based on any advice from her doctor, because she had not seen her doctor since he released to return to work without restrictions. There is no competent medical evidence that the claimant's heart condition was cause or aggravated by conditions at work or that it was impossible for the claimant to continue in employment due to a serious health danger. She also did not ask the employer for any accommodation before she quit her job.

The next issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that requires heavy exertion. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and the claimant has been activity looking for such work in compliance with the requirements of the law.

**DECISION:**

The unemployment insurance decision dated June 30, 2008, reference 01, is affirmed. Although the claimant is able to and available for work, she is disqualified based on the reasons for her separation from employment. She is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw