

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Marks began working for Pella Corporation on February 28, 2000 and was employed full time as an assembler. Her last day of work was April 17, 2005, and she was off work thereafter for medical reasons.

On September 15, Ms. Marks was sent a letter advising that she had exhausted all available leave and that her absences beginning September 1 were being counted against her attendance. She was advised that she needed to return to work by September 19 or she would be considered a voluntary quit. On September 16, her doctor indicated she could return to work. On September 19, Bill Lehner returned a call to Ms. Marks in response to a voice mail message she left on September 17. Ms. Marks initially indicated to Mr. Lehner that she could not return to work because she could not wear shoes due to pain. She was told that the employer would accommodate her by allowing her to wear open-toe shoes. She was also told the employer would accommodate her inability to wear pants by allowing her to wear skirts or a dress.

Mr. Lehner advised Ms. Marks that the company was awaiting the results of a functional capacity exam from her doctor. She was also told that the employer would be reviewing the material to determine what restrictions would be necessary to accommodate her limitations. Ms. Marks was told that she did not have to report to work on September 19 as indicated in the letter of September 15. She was told that she should report to work on September 20 as the employer would finalize her work restrictions on the morning of September 20. Ms. Marks did not report to work or contact the employer on September 20, 21, or 22.

On September 23, Ms. Marks was mailed a letter notifying her that she no longer had employment with Pella Corporation because she had been absent for three consecutive days without notice. The employer has a written work rule which provides that three consecutive unreported absences will be considered a voluntary quit. On September 28, Mr. Lehner returned a call to Ms. Marks. At that time, she indicated she had not returned to work because she was waiting for someone to call her and tell her where to report. Mr. Lehner reminded her of their conversation of September 19 in which he told her she was to report on September 20 and would be told at that time what work she would be performing. Ms. Marks' failure to return to work on September 20 as instructed was the sole reason for the separation.

Ms. Marks has received a total of \$1,944.00 in job insurance benefits since filing her claim effective September 25, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Marks was separated from employment for any disqualifying reason. She knew she was to return to work on September 20 but failed to do so. The administrative law judge concludes that she initiated the separation when she was absent for three consecutive days without notice to the employer. A separation initiated by the employee is a voluntary quit. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1).

Ms. Marks was absent for three consecutive days without notice in violation of a known company rule. An individual separated from employment under such circumstances is

presumed to have quit without good cause attributable to the employer. See 871 IAC 24.25(4). Ms. Marks has not presented evidence that would overcome the presumption that she quit without good cause attributable to the employer. She contended that she did not return to work on September 20 because she was told someone would call her with her work assignment. The employer contended that she was told to come in on September 20 and she would be notified of her work assignment at that point. The administrative law judge found the employer's testimony more persuasive. Given the employer's expressed willingness to accommodate whatever restrictions Ms. Marks had in spite of the fact that her condition was not work-related, the administrative law judge believes the employer had a genuine desire to return her to work. It would seem contrary to this willingness for the employer to tell her not to return until called and then terminate her from the employment for not coming back.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Ms. Marks quit her employment for no good cause attributable to the employer. Accordingly, benefits are denied. She has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

**DECISION:**

The representative's decision dated October 12, 2005, reference 01, is hereby reversed. Ms. Marks quit her employment with Pella Corporation for no 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 job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Marks has been overpaid \$1,944.00 in job insurance benefits.

cfc/kjw