

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AVA Y PAIGE
Claimant

APPEAL 18A-UI-05972-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA JEWISH SENIOR LIFE CENTER
Employer

**OC: 05/06/18
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 25, 2018, (reference 01) unemployment insurance decision that denied benefits based on her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on June 18, 2018. The claimant participated and testified. Jon Geyer was also present as claimant's non-attorney representative. The employer participated through Business Office Manager Jackie Hoit and Certified Dietary Manager Heide Warner. Claimant's Exhibits A and B were received into evidence.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a cook/dietary aide from June 15, 2012, until this employment ended on April 17, 2018, when she voluntarily quit.

On April 12, 2018, claimant injured herself while at work when she was cut on a plate dispenser. The injury required stiches and claimant was told she could not get it wet until the stiches were removed. Claimant was also given a five pound lifting/pulling/pushing restriction on the injured hand, but was released to return to work on April 13 under those restrictions. Claimant's immediate supervisor, Warner, told claimant she would have another employee familiar with the kitchen, but not claimant's precise job duties, come in and assist with her work. Warner told claimant she would be responsible for directing the other employee in how to perform the job duties that claimant could not perform with her injury.

Claimant was off on April 13, but on her next scheduled day, April 14, claimant notified Warner her hand was still hurting and swollen, so she would not be in. For the next several days claimant did not come in to work. Claimant did ask Warner on April 15 about the possibility of being reassigned to the laundry department temporarily, but was told that was not possible. Warner testified she did not recall claimant making this request, but that if she had, some of the

work in the laundry room would not have been compliant with her restrictions. On April 17, when claimant still had not returned to work, Warner sent her a message asking if she planned to return. Claimant responded that she was resigning effective immediately. Claimant had not mentioned the possibility of resigning to the employer prior to this time. Warner asked if she was sure and claimant responded she was. Both Warner and Hoit testified that had claimant not resigned, work within her restrictions would have been available to her.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit the employment without good cause attributable to employer.

Iowa Code section 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.

Iowa Admin. Code r. 871-24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable

accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Here, there is no dispute that claimant suffered a work-related injury. However, claimant was released to return to work, with restrictions, effective April 13, 2018. The employer provided credible testimony that it was willing to accommodate claimant's restrictions and had work available within these restrictions. Claimant nevertheless chose to resign. Claimant did not resign under medical directive, nor did she inform the employer of her intent to resign prior to submitting her resignation. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The May 25, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit the employment without good cause attributable to employer. Benefits are withheld until such time as she works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs