

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REBECCA S BOSWELL
Claimant

APPEAL 17A-UI-07475-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE BON-TON DEPARTMENT STORES INC
Employer

**OC: 07/02/17
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 20, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her employment for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on August 9, 2017. The claimant, Rebecca Boswell, participated. The employer, The Bon-Ton Department Stores, Inc., participated through Steve Shimp, Divisional Vice President of Human Resources. Claimant's Exhibit A was received and admitted into the record without objection.

ISSUE:

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, most recently as a Store Manager, from May 12, 2015, until June 23, 2017, when she quit due to a non-work-related medical condition. Claimant's physician diagnosed her with chronic Achilles tendonitis in both feet. (Exhibit A) This condition prevented claimant from standing and walking for more than six hours each day. In claimant's position as a Store Manager, she was required to be on her feet, standing or walking, up to 95% of her workday. Claimant was aware of this requirement when she was hired, and it remained a consistent expectation throughout her employment. Continued work was available for claimant, had she not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from employment was without good cause attributable to the employer. Benefits are withheld.

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.

Iowa Admin. Code r. 871-24.25(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 section 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 section 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:

(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.

Here, claimant was diagnosed with and experiencing a non-work-related illness. This non-work-related illness caused claimant to leave her employment. While claimant left her employment for compelling personal reasons, she did not do so for a good-cause reason attributable to her former employer. Benefits are withheld.

DECISION:

The July 20, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant separated from 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn