

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE A CAHILL
Claimant

APPEAL NO. 11A-UI-15580-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

OC: 10/02/11
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 29, 2011 (reference 02) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on January 4, 2012. Claimant participated with her mother Mary Lou Supalla and fiancé Steve Mammel. Employer opted not to participate. Claimant's Exhibit A was admitted to the record.

ISSUE:

The issue is whether claimant is qualified for benefits based upon his medically-related temporary separation from the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a seasonal box packer and was separated from employment on November 2, 2011. She quit because of an allergic reaction to the packing materials she was required to use in the performance of her job duties. (Claimant's Exhibit A, page 3)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment for no disqualifying reason.

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.

871 IAC 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 § 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 § 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.

871 IAC 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.

While a claimant must generally return to offer services upon recovery, subparagraph (d) of Iowa Code § 96.5(1) is not applicable where it is impossible to return to the former employment because of medical restrictions connected with the work. See *White v. EAB*, 487 N.W.2d 342 (Iowa 1992). Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. *Shontz v. IESC*, 248 N.W.2d 88 (Iowa 1976). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. *Raffety v. IESC*, 76 N.W.2d 787 (Iowa 1956).

Because claimant's medical condition was caused by the working conditions, the decision not to return to the employment according to medical advice was not a disqualifying reason for the separation.

DECISION:

The November 29, 2011 (reference 02) decision is reversed. The claimant voluntarily left her employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw