

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHIMA A ANSAGAY**  
Claimant

**APPEAL NO. 10A-UI-12222-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 07/18/10  
Claimant: Respondent (1)**

Section 96.5(1) – Voluntary Quit  
871 IAC 24.26(6)(b) – Voluntary Quit Due to Medical Condition Attributable to the Employment.

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 23, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 21, 2010. Claimant participated. Jenny Mora, Employment Manager, participated for the employer. Exhibits One, Two, and Three were received into evidence. Kunama-English interpreter Elasha Awate assisted with the hearing.

**ISSUE:**

Whether the claimant separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer's sole witness for the hearing did not have any contact with the claimant during her employment or any personal knowledge of the claimant's employment or separation from the employment. The claimant is non-English speaking and speaks Kunama, an African language. The claimant was employed as a full-time meat packing plant production worker from May 2009 until June 24, 2010, when she voluntarily quit due to a work-related injury to her hands due to the repetitive nature of the employment. The injury included pain and, ultimately, the loss of six fingernails. During the last several months of the employment, the claimant sought evaluation and treatment from her own physician. Several times, the claimant was off work due to the need to attend medical appointments related to the injury. The claimant provided the employer with several medical excuses. The claimant's doctor advised the claimant to cease working in her assigned area. The claimant requested to be moved to a different work area. The employer refused the request. The employer was on notice that the claimant would need to separate from the employment if she were not allowed to work in a different area. On June 24, 2010, the claimant presented the employer with a doctor's note that took her completely off work indefinitely. On July 8, the claimant attempted to return to the employment, but the employer would not allow her to do so.

## REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

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.

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.

The Workforce Development rule derives from the Iowa Supreme Court's ruling in Suluki v. Employment Appeal Bd., 503 N.W.2d 402, 405 (Iowa 1993), in which the Court held as follows:

[B]efore quitting, an employee must give an employer notice of work-related health problems and that the employee intends to quit unless those problems are corrected or the employee is otherwise reasonably accommodated. Absent such notice, the employee had left work voluntarily without good cause attributable to the employer and is not entitled to unemployment compensation benefits.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence in the record establishes a June 24, 2010 voluntarily quit due to a work-related injury. The injury was based on the repetitive nature of the claimant's assigned duties. The claimant was compelled to leave the employment upon the advice of her doctor after the employer refused her reasonable requests to be transferred to another work area that would not continue to aggravate the injury. The claimant faced serious danger to her health if she continued in the employment. The employer's sole witness for the hearing did not have any contact with the claimant during her employment or any personal knowledge of the claimant's employment or separation from the employment. The employer's most meaningful contribution to the hearing was the employer's testimony regarding the many doctors' notes the claimant had provided to the employer. The claimant provided credible testimony regarding her work-related injury and her attempts to obtain reasonable accommodations from the employer prior to presenting the June 24, 2010 doctor's note that ended the employment.

The claimant voluntarily quit the employment on June 24, 2010 for good cause attributable to the employer. Accordingly, the claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

There is insufficient evidence in the record for the administrative law judge to decide the issue of whether the claimant has been able to work and available for work since she filed her claim for benefits. This matter will be remanded to the Claims Division for investigation and determination of those issues.

**DECISION:**

The Agency representative's August 23, 2010, reference 01, decision is affirmed. The claimant voluntarily quit the employment with good cause attributable to the employer based on a work-related injury. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

This matter is remanded to the Claims Division for determination of the claimant's work ability and work availability since she filed her claim.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw