

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIA M TRUESDELL
Claimant

PEARSON GOVERNMENT SOLUTIONS INC
Employer

APPEAL NO. 07A-UI-06999-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/17/07 R: 03
Claimant: Respondent (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Pearson Government Solutions (employer) appealed a representative's July 3, 2007 decision (reference 01) that concluded Tia Truesdell (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 1, 2007. The claimant participated personally. The employer participated by Lorie Sherman, Human Resources Generalist.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on July 31, 2006, as a full-time customer service representative. The claimant informed the employer she was having arm pain resulting from her job duties. The employer sent the claimant to its physician and physical therapist. Both indicated that the injury was work-related. The physician limited the claimant's movement of her right arm. The employer refused to comply with the physician's work restrictions. On June 14, 2007, the claimant resigned after warning the employer because the work was aggravating her injury.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the 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.

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.

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).

The employer refused to follow the physician and physical therapist's order for light-duty work. As a result, the claimant's arm injury was aggravated by her work. The claimant notified the employer of the issue and the employer refused to comply. The claimant voluntarily quit work with good cause attributable to the employer

Note to parties: Any reference to the work relatedness of claimant's injury is specific to this unemployment insurance benefits determination only and is not binding on the issue of claimant's entitlement to workers' compensation benefits, if any. That issue falls within the authority of the Iowa Workers' Compensation Commissioner.

DECISION:

The representative's July 3, 2007 decision (reference 01) is affirmed. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw