

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JANET BALO
Claimant

APPEAL NO. 19A-UI-01992-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 02/10/19
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Janet Balo filed a timely appeal from the March 4, 2019, reference 01, decision that held she was disqualified for benefits and the employer's account was relieved of liability for benefits, based on the deputy's conclusion that Ms. Balo voluntarily quit on February 12, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 3, 2019. Ms. Balo participated personally and was represented by attorney Mary Hamilton. Julie Shimon represented the employer and presented additional testimony through Deb Aberson. Exhibits 1 through 7 and A through G were received into evidence.

ISSUE:

Whether Ms. Balo's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Janet Balo was employed by Casey's Marketing Company as a full-time cashier/cook at the Alta, Iowa Casey's store from 2015 until February 8, 2019, when she voluntarily quit. Deb Aberson was Store Manager and Ms. Balo's primary supervisor. Assistant Managers Cody Steverson and Nona Sand also supervised Ms. Balo's work. In November 2017, Ms. Balo suffered a workplace injury to her shoulder when a box fell from a high shelf in the freezer and Ms. Balo overextended her arm as she tried to protect herself from being injured by the box. Ms. Balo promptly reported the injury to Ms. Aberson, but Ms. Aberson took no steps at that time to treat the matter as a worker's compensation matter. At the time of the incident, Ms. Balo lacked health insurance and did not seek medical treatment. Once Ms. Balo secured employer-sponsored health insurance in January 2018, she sought medical evaluation of her ongoing shoulder issue and received a cortisone shot in her shoulder. Ms. Balo's doctor identified the injury as a worker's compensation matter and directed Ms. Balo to get with the employer to file a report of injury. Ms. Balo contacted the employer's corporate and office and Ms. Aberson, but learned that the employer was denying the worker's compensation claim because the report of injury had not previously been completed.

In March 2018, Ms. Balo suffered a second workplace injury to her shoulder, when she fell while helping to unload freight. This second shoulder injury gave rise to a worker's compensation claim. Ms. Balo underwent an MRI in April 2018 that revealed she had a torn rotator cuff. Ms. Balo underwent surgery on her shoulder in May 2018 and remained off work until August or September 2018. Ms. Balo initially returned with a five-pound lifting restriction, but subsequently transitioned to being restricted from lifting more than 20 pounds to waist height and from lifting more than 10 pounds overhead. The other staff at the Alta Casey's store were less than sympathetic to Ms. Balo's situation and made her work situation more difficult. In October 2018, a coworker directed a highly offensive epithet at Ms. Balo. Ms. Balo promptly reported the matter, but the employer left the matter unresolved until the end of January 2019. Despite Ms. Balo's permanent lifting restriction, the employer continued to assign Ms. Balo to unload the freight truck and left to her to figure out which items exceeded her lifting limit. The employer elected to assign Ms. Balo to assist with unloading the freight truck in lieu of assigning her to perform the less taxing work of running the cash register. Though Ms. Balo's employment had been full-time, Ms. Aberson commenced scheduling Ms. Balo for less than the 35 hours per week that Ms. Balo needed to maintain in order to keep her employer-sponsored health insurance. In connection with her deteriorating work situation, Ms. Balo commenced being treated for anxiety in October 2018.

On October 24, 2018, Ms. Balo arrived for her early morning shift to find several heavy boxes stacked in front of the freezer she needed she need to access. Ms. Balo was upset by the situation and left shortly after she arrived. When Ms. Balo left, she made sure the store was locked, but did not re-arm the alarm system. Ms. Balo knew that Ms. Sand was due at the workplace momentarily. Ms. Balo passed Ms. Sand as she was leaving. Ms. Aberson subsequently issued a reprimand to Ms. Balo for failing to re-arm the alarm system, but did nothing to address the boxes that an employee had left stacked in front of the freezer Ms. Balo needed to access.

On January 25, 2019, Area Supervisor Julie Shimon went to the Alta Casey's store ostensibly to address the October 2018 vulgar comment the coworker had address to Ms. Balo. At that time, Ms. Balo shared that she had commenced treatment for anxiety in connection with her work situation. Ms. Shimon encouraged Ms. Balo to receive treatment for that issue through the employer's worker's compensation provider, but Ms. Balo elected to continue treatment with her doctor. In January and February 2019, Ms. Balo's worker's compensation attorney and the employer's worker's compensation attorney engaged in correspondence regarding Ms. Balo's concern that she was being mistreated by coworkers.

On February 8, 2019, Ms. Balo arrived for work and was assigned by Assistant Manager Cody Steverson to help unload freight. Mr. Steverson declined Ms. Balo's request to operate the cash register instead. Mr. Steverson reserved those less taxing duties for himself. Ms. Balo was upset and left work early due to a migraine headache. Before Ms. Balo left, Ms. Aberson told Ms. Balo that she would have to find her own replacement to cover the remainder of the shift. Ms. Balo notified the employer that she would not be returning to the employment. The next day, Ms. Balo conferred with her doctor, who also recommended that she seek other employment.

REASONING AND CONCLUSIONS OF LAW:

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)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 Administrative Code rule 817-24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

The weight of the evidence in the record establishes a voluntary quit for good cause attributable to the employer. The weight of the evidence establishes that Ms. Balo's quit was in response to a pattern of behavior on the part of the employer that made her work situation intolerable and that would have prompted a reasonable person to leave the employment. Ms. Balo's injury was work related. Prior to leaving the employment, Ms. Balo requested a reasonable accommodation of performing cashiering duties, rather than freight unloading duties on freight days. The employer unreasonably denied Ms. Balo's request for that reasonable accommodation. Ms. Balo's attorney notified the employer on Ms. Balo's behalf that Ms. Balo intended to leave the employment unless the ongoing detrimental treatment ceased. When the pattern continued, Ms. Balo left the employment. The weight of the evidence establishes that Ms. Balo's doctor was well-informed of the detrimental working conditions and supported Ms. Balo's decision to leave the employment. Ms. Balo is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The March 4, 2019, reference 01, decision is reversed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs