

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

IRENE S BAHNS
5179 HEATHERSTONE CT
BETTENDORF IA 52722

OLYMPIC STEEL IOWA INC
c/o TALX UC EXPRESS
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-00228-DT
OC: 12/04/05 R: 02
Claimant: Appellant (2/R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.26-6-b – Work-related Illness or Injury

STATEMENT OF THE CASE:

Irene S. Bahns (claimant) appealed a representative's December 30, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Olympic Steel Iowa Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 24, 2006. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a representative or witness could be reached for the hearing and did not participate in the hearing. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on March 28, 2005. She worked full time as an inside salesperson in the employer's Bettendorf, Iowa, steel warehousing business. Her last day of work was November 14, 2005. She voluntarily quit as of that date.

The claimant has a severe heart condition. Prior to November 11, 2005, the claimant's doctor had expressed concern to her that she was under too much stress in her employment with the employer, and that the stress was placing her heart at risk for further ventricular fibrillation arrest or stoppage. He had advised that she find another line of work "in an area that requires less cognitive difficulties and stress." The claimant's supervisor also had concerns regarding the claimant's abilities to handle her position. On November 14, she agreed that she could not continue in her position, and her supervisor indicated that there were no other less-stressful positions available. Therefore, the claimant ended her employment with the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant quit, and if so, whether it was for 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.

The rule does not require that the employment cause the health condition, only that the health condition be "aggravated" by the employment. The claimant has satisfied the requirements of the rule. The employer was unable to provide reasonable accommodation in order to retain the claimant's employment. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Benefits are allowed, if the claimant is otherwise eligible.

An issue as to whether the claimant is able and available for work arose during the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's December 30, 2005 decision (reference 01) is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the able and available issue.

ld/kjw