

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOAQUIN DAVILA**  
Claimant

**APPEAL NO. 20A-UI-01477-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEAR CREEK DAIRY LP**  
Employer

**OC: 08/11/19**  
**Claimant: Appellant (1)**

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Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Joaquin Davila filed a timely appeal from the February 14, 2020, reference 04, decision that held he was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Davila voluntarily quit on October 29, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on March 5, 2020. Mr. Davila participated. Theodora Kouwenberg Boelen represented the employer. Spanish-English interpreters Anna Romero and Hardy Rosario of CTS Language Link assisted with the hearing.

**ISSUE:**

Whether the claimant'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: The claimant, Joaquin Davila, was employed by Bear Creek Dairy, L.P., as a full-time milking laborer from early in September 2019 until October 29, 2019, when he voluntarily quit. At that point, Mr. Davila ceased appearing for work and ceased contact with the employer. Mr. Davila's supervisors were the business owners, Jan Boelen and Theodora Kouwenberg Boelen. The Boelens are from The Netherlands (Holland) and speak fluent English as a second language. Mr. Davila is from Mexico. His native language is Spanish. During the employment, Mr. Davila conversed with the employer in fluent English. Mr. Davila left the employment without speaking to the employer regarding his intentions. Mr. Davila left the employment so that he could return to his native country of Mexico to check on the laborers who were working his farm in Mexico. Mr. Davila gave no indication to the employer that there was any medical basis for his decision to leave the employment. A doctor had not advised Mr. Davila to leave the employment. Due to the nature of the dairy farm operation, Mr. Davila's sudden disappearance made it necessary for the employer to seek an immediate replacement. On January 31, 2020, Mr. Davila appeared at the employer's business and requested to return to the employment. At that time, Mr. Davila told the employer that he had gone to Mexico to check on his farm because he could trust the laborers who were working his farm. Mr. Davila made no mention at that time about needing to leave the employment due to injury or some other health reason. The employer had replaced Mr. Davila and did not have additional work for him.

## REASONING AND CONCLUSIONS OF LAW:

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.

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.

The evidence in the record establishes an October 29, 2019 voluntary quit for personal reasons and without good cause attributable to the employer. Significant elements of Mr. Davila's testimony were not credible. The weight of the evidence establishes that Mr. Davila disappeared from the employment at the end of October 2019 without giving notice to the employer that he was leaving or the reason for his sudden departure. Though the business owner hired Mr. Davila and was directly involved in business operations, Mr. Davila asserts that he had no supervisor during the employment. That assertion was not only inconsistent with the employer's testimony, but was also inconsistent with logic and common sense given the nature of the employment. The weight of the evidence indicates that the coworker to whom Mr. Davila asserts he gave notice of his departure had separated from the employment before such conversation could have taken place. Mr. Davila's belated assertion that he had to separate from the employment to seek medical treatment is not credible. Mr. Davila never mentioned any such issue to the employer. Mr. Davila has provided no medical documentation to support the notion that a physician advised him to leave the employment or that it was medically necessary for him to leave the employment. Mr. Davila told the employer an entirely different story when asked for his job back after being absent without notice for three months. The weight of the evidence indicates that Mr. Davila disappeared from the employment for the reason he told the employer when he asked to return to the employment. The weight of the evidence also supports the employer's assertion that Mr. Davila is able to communicate effectively in English. The administrative law judge noted multiple instances in the appeal hearing where Mr. Davila assisted and/or corrected the Spanish-English interpreter and where he answered in English a question put to him in English and did so before the question could be interpreted into Spanish. The administrative law judge found the employer's testimony to be candid, balanced and credible. The employer witness acknowledged the limit of her knowledge where appropriate and spoke in detail and with clarity regarding matters within her personal knowledge. Because Mr. Davila's decision to separate from the employment so that he could go check on his farm in Mexico did not establish good cause attributable to the employer for the voluntary quit, Mr. Davila is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Davila must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The February 14, 2020, reference 04, decision is affirmed. The claimant voluntarily quit the employment effective October 29, 2019 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs