IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MIGUEL A MARCELENO
Claimant

ALLSTEEL INC
Employer

APPEAL NO. 17A-UI-09746-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/27/17
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 13, 2017, reference 01, decision that allowed benefits to claimant Miguel Marceleno provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the claims deputy's conclusion that Mr. Marceleno voluntarily quit on August 11, 2017 for good cause attributable to the employer. After due notice was issued, a hearing was held on October 10, 2017. Mr. Marceleno participated in the hearing. Malia Maples of Employers Edge represented the employer and presented testimony through Ashley Steffens and Brian Swink. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO), which record indicated that no benefits have been disbursed to Mr. Marceleno or charged to the employer's account in connection with the claim.

ISSUE:

Whether Mr. Marceleno'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: Miguel Marceleno was employed by Allsteel, Inc. as a full-time "utility" worker until August 11, 2017, when he voluntarily quit. Mr. Marceleno's designation as a utility worker meant that he did not have a consistent work station or a set work assignment. Instead, Mr. Marceleno was assigned to fill in for other employees as needed for breaks, absences and so forth. Mr. Marceleno's duties included operating a forklift and manufacturing production work. Mr. Marceleno's work hours were 4:30 a.m. to 12:30 p.m. or 1:00 p.m., Monday through Friday. Mr. Marceleno also worked Saturdays as needed. Chris Watson was Mr. Marceleno's immediate supervisor. Austin Davis and Jason Gold also supervised Mr. Marceleno's work.

Mr. Marceleno had been with the employer for several years at the time he submitted his written resignation on August 1, 2017. On that day, Mr. Marceleno completed a voluntary resignation form he obtained from the employer's human resources staff and delivered the signed and dated form to Ashley Steffens, Member and Community Relations Generalist, a human resources representative. Mr. Marceleno indicated on the form that his last day in the

employment would be August 11, 2017. At the time Mr. Marceleno submitted his resignation and quit the employment, the employer continued to have work available for him.

In April 2017, Mr. Marceleno suffered chest, shoulder and back injury in the course of performing his work duties. Mr. Marceleno suffered the injury as he was manipulating a 48-inch by 90-inch piece of wood onto the cutting surface of a machine. The lid of the machine was broken, which made placing the board on the cutting more difficult. Mr. Marceleno had previously reported the broken machine issue to the maintenance staff, but the maintenance staff had not fixed the machine lid. As Mr. Marceleno manipulated the board onto the machine, he felt a popping sensation on the left side of his chest, in his left shoulder, and in his back. Mr. Marceleno thought he had broken something in his chest, shoulder and/or back. Mr. Marceleno promptly told supervisor Austin Davis that he felt like he had pulled a muscle in his chest and back. Mr. Davis asked Mr. Marceleno if he was okay and offered Mr. Marceleno ibuprofen. The employer has an on-site nurse. Mr. Austin did not suggest that Mr. Marceleno go be assessed by the nurse and Mr. Marceleno did not request to go to the nurse. Mr. Marceleno was under the belief that the employer's procedures required him to address the matter through his supervisor. The employer maintains computer kiosks that employees may access to report workplace injuries. Neither Mr. Austin nor Mr. Marceleno used the computer kiosk to report Mr. Marceleno's injury. Such report would have been routed to dozens of plant staff, including safety personnel. Mr. Marceleno continued to take ibuprofen to address his muscle pain.

At some point in the weeks that followed the injury incident, Mr. Marceleno spoke to his primary supervisor, Chris Watson, about the incident. Mr. Marceleno told Mr. Watson that his chest still hurt and that he was feeling dizzy. Mr. Watson told Mr. Marceleno, "Do what you need to do." Mr. Watson did not take any further action on the matter at that time.

In June 2017, Mr. Marceleno experienced chest pain and severe dizziness at work. Mr. Marceleno was concerned that he might be experiencing a heart attack. Mr. Watson and supervisor Jason Gold escorted Mr. Marceleno to the break room, where they had him sit and rest. Mr. Marceleno told the supervisors that his chest really hurt, that the left side of his chest was swollen, and that he thought he had had a heart attack. The supervisors summoned safety personnel. Mr. Marceleno continued to feel dizzy. Mr. Marceleno told the safety personnel that he did not feel good and needed to be checked out by a doctor. The safety personnel asked Mr. Marceleno whether he wanted to be taken to the hospital or wanted to take care of it on his own. Mr. Marceleno stated that he would transport himself. Mr. Marceleno went home and had his wife transport him to Genesis Medical Center. Mr. Marceleno was admitted to the hospital and remained in the hospital for three days while the medical staff monitored his heart. The doctor ordered x-rays and diagnosed a chest muscle injury. The doctor ruled out a cardiac issue. The doctor prescribed a muscle relaxer medication to address the chest muscle injury. The doctor released Mr. Marceleno to return to work at Allsteel, but advised Mr. Marceleno to avoid the more physically-demanding aspects of the employment. Mr. Marceleno returned to work and told Mr. Watson that the doctor had advised him to avoid the more physically-demanding aspects of the employment. Mr. Marceleno continued to take the muscle relaxer medication, felt better as a result, and continued to perform his regular duties. Mr. Watson left it to Mr. Marceleno to assert that a particular assigned task was beyond his physical ability, but also communicated to Mr. Marceleno an expectation that all assigned work would be completed one way or another. Mr. Marceleno continued to feel obligated to complete all assigned work.

Once Mr. Marceleno's muscle relaxer medication ran out, Mr. Marceleno's shoulder and chest pain returned. During the first week of July 2017, Mr. Marceleno sought evaluation and treatment from a chiropractor. The chiropractor took x-rays of Mr. Marceleno's back and left

shoulder. The chiropractor told Mr. Marceleno that he could not do anything for Mr. Marceleno's chest in light of Mr. Marceleno's muscle tenderness in that area. The chiropractor manipulated Mr. Marceleno's shoulder, which helped Mr. Marceleno feeling better. The chiropractor released Mr. Marceleno to return to work, but recommended that Mr. Marceleno return to the chiropractor two times per week to have his shoulder manipulated. Mr. Marceleno returned to work and told supervisor Austin Davis that he had sought additional treatment for his pain issues. Mr. Davis took no further action on the matter. Mr. Marceleno had five or six chiropractic adjustment sessions in total.

On Friday, July 14, 2017, Mr. Marceleno spoke with Mr. Watson and supervisor Jason Gold about his chest muscle pain. The supervisors provided Mr. Marceleno with Biofreeze, a topical pain reliever. Mr. Watson advised Mr. Marceleno to take it easy over the weekend, but took no further action on the matter.

On Wednesday, July 19, 2017, Mr. Marceleno sought out Brian Swink, a safety engineer at Allsteel, regarding his ongoing chest pain issues. Mr. Marceleno wanted the employer to facilitate further evaluation and treatment concerning the chest and shoulder pain. Mr. Marceleno told Mr. Swink about his cardiac scare, about the doctor ruling out of the cardiac concern, and about his chest pain temporarily subsiding in response to the muscle relaxer medication. Mr. Marceleno told Mr. Swink about the subsequent increase in chest pain and about his discussion with supervisor Austin Davis during the first week of July. Mr. Marceleno told Mr. Swink about reporting his pain to supervisors Chris Watson and Jason Gold on July 14, about the supervisors providing him with Biofreeze, and about Mr. Watson telling him to take it easy over the weekend.

During the July 19 contact, Mr. Swink, who had not been involved in Mr. Marceleno's previous discussions with the supervisors, was not convinced that Mr. Marceleno's chest pain complaint was work-related. Mr. Swink was concerned at the time of that contact that Mr. Marceleno could not at that time reference a specific injury event as the source of his current pain complaint. Mr. Swink believed that Mr. Marceleno's complaint about chest pain and shoulder pain radiating into his arm sounded more like symptoms of heart disease. Mr. Swink told Mr. Marceleno that he would "talk to leadership" and get back in touch with Mr. Marceleno "in a few days." Mr. Swink wanted to speak with Mr. Watson and the other supervisors before deciding on a course of action in response to Mr. Marceleno's complaint. Mr. Swink closed the meeting by providing Mr. Marceleno with his cell phone number and by inviting Mr. Marceleno to contact him as needed. Mr. Swink conferred with supervisors Jason Gold and Austin Davis. When Mr. Swink attempted to contact Mr. Watson, he learned that Mr. Watson was on vacation for the remainder of the week. Mr. Swink subsequently spoke with Mr. Watson.

Mr. Swink did not get back to Mr. Marceleno within a few days as promised. When Mr. Marceleno had not heard back from Mr. Swink by Tuesday, July 25, 2017, he went to the employer's human resources office and requested a resignation form. Ashley Steffens, Member and Community Relations Specialist, asked Mr. Marceleno why he wanted to resign. Mr. Marceleno told Ms. Steffens that he had been injured on the job and that no one had done anything about it. Mr. Marceleno said he had spoken to his supervisors, but that no one had done anything about his concern. Mr. Marceleno said he was supposed to have a follow-up meeting with Mr. Swink, but that Mr. Swink had not gotten back to him. After Mr. Marceleno had spoken with Mr. Swink on July 19, he had seen Mr. Swink in the plant at a time when Mr. Watson was also present. Mr. Marceleno was frustrated that Mr. Swink had not followed up with him when Mr. Marceleno was readily available at the plant. Ms. Steffens asked Mr. Marceleno not to resign at that time and told Mr. Marceleno that she would reach out to his

supervisor and to the safety personnel. Mr. Marceleno left Ms. Steffens' office without resigning.

After her July 25, 2017 contact with Mr. Marceleno, Ms. Steffens sent an email message to Mr. Watson and Mr. Swink. In the message, Ms. Steffens stated that Mr. Marceleno was alleging that he was hurt at work. Ms. Steffens requested additional information from Mr. Watson and Mr. Swink. Ms. Steffens asked Mr. Swink to make contact with Mr. Marceleno.

After Mr. Swink received Ms. Steffens' message, he attempted to contact Mr. Marceleno by cell phone to let him know he had not forgotten about him. Mr. Marceleno was in the plant at the time that Mr. Swink attempted to reach Mr. Marceleno on his cell phone. Mr. Marceleno did not carry his cell phone at work because the employer's work rules prohibited him from possessing his phone at work.

On the evening of July 25, 2017, Mr. Marceleno again sought medical evaluation and treatment for his chest pain at Genesis Medical Center. The doctor at the hospital told Mr. Marceleno that his chest muscle was swollen. The doctor gave Mr. Marceleno a steroid injection and prescribed a muscle relaxer. The doctor released Mr. Marceleno to return to work, but restricted use of his left arm. The doctor restricted Mr. Marceleno from pushing or pulling more than one pound with his left arm. The doctor restricted Mr. Marceleno from overhead work with his left arm and from work that involved repeated pinching motion with Mr. Marceleno's left hand. Mr. Marceleno is right-handed.

Mr. Marceleno returned to work on July 26 and provided the medical restriction document to Mr. Watson. Mr. Watson and Mr. Marceleno agreed that operating the forklift was within Mr. Marceleno's restrictions and that Mr. Marceleno would, in the short-term, confine his work activities to operating the fork lift. Mr. Marceleno acquiesced to this short-term accommodation even though the position of the forklift steering wheel on the left side of the forklift made it awkward to operate the forklift with his right hand.

Mr. Watson provided Mr. Marceleno's medical restriction form to Mr. Swink. Mr. Swink discussed the medical restriction form with supervisor, Michael Schmidt. Mr. Schmidt decided that the statement of medical restrictions was "not good enough" and that Allsteel would have Mr. Marceleno be seen by the employer's occupational health doctor at Trinity Occupational Health.

On the evening of July 27, 2017, Mr. Swink spoke with Mr. Marceleno. Mr. Swink told Mr. Marceleno that he wanted Mr. Marceleno to be seen by the employer's occupational health doctor. Mr. Swink told Mr. Marceleno that because Mr. Marceleno had sought medical evaluation and treatment on his own, Trinity Occupational Health would not see him unless he signed a medical release allowing the prior providers to release Mr. Marceleno's medical treatment records to Trinity Occupational Health. Mr. Marceleno promptly reported to Trinity Occupational Health and signed the required medical release.

On August 4, 2017, Mr. Swink scheduled an appointment for Mr. Marceleno at Trinity Occupational Health for the afternoon of August 4, 2017. Mr. Swink attempted to contact Mr. Marceleno to let him know of the appointment set for that afternoon, but Mr. Marceleno did not receive that notice, did not know about the appointment, and did not attend the August 4 appointment.

On August 9, 2017, Member and Community Relations Representative Sue McDonald spoke to Mr. Marceleno by telephone and told him she would be sending a certified letter regarding a

medical appointment the employer had rescheduled for Mr. Marceleno. Mr. Marceleno received no such letter. Mr. Marceleno worked his final day for the employer on August 11, 2017 and then separated from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1-d provides:

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

Workforce Development rule 817 IAC 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.

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 213 (Iowa 2005).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

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 employer presented insufficient evidence to rebut Mr. Marceleno's testimony concerning events that preceded Mr. Swink's involvement in the matter beginning on July 19 and Ms. Steffens' involvement in the matter beginning on July 25. The administrative law judge notes that testimony from Mr. Watson, Mr. Davis and Mr. Gold was conspicuously absent from the hearing. The employer had the ability to present testimony from those three people, and from Ms. McDonald, but elected not to present such testimony.

The weight of the evidence in the record establishes a voluntary quit based on an April 2017 workplace injury and recurring chest pain relating back to that injury. The weight of the evidence establishes that the work-related chest pain was on multiple occasions severe enough to prompt him to seek medical attention. The weight of the evidence establishes that Mr. Marceleno appropriately reported the injury incident to a supervisor on the day it occurred on April 2017, but that the supervisor failed to document the report of injury or take reasonable steps to address it. The weight of the evidence establishes that Mr. Marceleno subsequently reported his chest pain issues related to April 2017 injury to his primary supervisor, Mr. Watson, but that Mr. Watson failed to document the issues or take reasonable steps to address it. The weight of the evidence establishes that Mr. Marceleno subsequently experienced severe chest pain and severe dizziness issues at work, reported those issues to the employer, and the employer once again failed to take reasonable steps to address the matter. On that day, Mr. Marceleno's chest pain was so intense that he thought he was having a heart attack. Rather than taking reasonable steps to address the situation, the employer left the matter in Mr. Marceleno's hands. Mr. Marceleno sought necessary medical attention, was admitted to the hospital, and was diagnosed with a chest muscle injury that would have been diagnosed much sooner if the supervisors or safety personnel had taken reasonable steps to respond to his earlier complaints. Mr. Marceleno returned to work, spoke with a supervisor about his ongoing

pain issues, and the supervisor again failed to take reasonable steps in response to the report. Mr. Marceleno subsequently made contact with Mr. Swink to get the employer's assistance in facilitating further evaluation and treatment for the ongoing pain relating back to the April 2017 injury. Because Mr. Swink had been out of the loop, and because Mr. Marceleno's supervisors had not documented or forwarded information regarding Mr. Marceleno's discussions with them, Mr. Swink discounted Mr. Marceleno's assertion that his chest pain was work-related and imposed further obstacles to Mr. Marceleno receiving employer-provided evaluation and/or treatment of his work-related chest pain. Even though Mr. Marceleno told Mr. Swink about the hospitalization during which a cardiac concern was ruled out, Mr. Swink unreasonably elected to believe that Mr. Marceleno's condition was likely cardiac in nature. Mr. Swink made Mr. Marceleno wait for care even longer while Mr. Swink belatedly investigated the matter.

When Mr. Marceleno did not hear back from Mr. Swink within a reasonable time, he went to the human resources staff on July 25, 2017 and requested the resignation form. At that point, Mr. Marceleno once again told his story, this time to Ms. Steffens. At that point, the employer was on notice that Mr. Marceleno intended to quit the employment due to the employer's prolonged and ongoing failure to provide a reasonable response to the chest pain issues relating back to the April 2017 injury. After Mr. Marceleno gave notice that he was thinking of quitting the employment, the employer and/or its health care provider imposed yet another obstacle to Mr. Marceleno receiving employer-provided evaluation or treatment. This time the requirement imposed was that Mr. Marceleno sign a release of medical information as a condition of being seen by the employer's occupational health doctor. Mr. Marceleno promptly complied. Thereafter, Mr. Swink scheduled an appointment for Mr. Marceleno for the afternoon of August 4, but failed to take reasonable and timely steps to notify Mr. Marceleno of the appointment. In the meantime, Mr. Marceleno had submitted his written resignation on August 1, 2017, to be effective August 11, 2017. On August 9, Ms. McDonald spoke with Mr. Marceleno regarding a letter the employer would be sending regarding a medical appointment, but apparently then failed to follow through on sending the letter.

From the date of the workplace injury in April 2017 through Mr. Marceleno's August 11, 2017 effective quit date, the employer engaged in a pattern of negligence and systemic stonewalling in response to Mr. Marceleno's bona fide concern that he had a serious work-related health issue that necessitated further evaluation and treatment. The employer's conduct went beyond failure to provide reasonable accommodation. The employer's pattern of behavior was sufficient to establish intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment.

Mr. Marceleno voluntarily quit the employment for good cause attributable to the employer. Accordingly, Mr. Marceleno is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The September 13, 2017, reference 01, decision is affirmed. The claimant quit the employment on August 11, 2017 for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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