

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD T TEGTMEYER
Claimant

APPEAL NO. 09A-UI-08412-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE ORIGINAL SAW CO
Employer

OC: 04/26/09
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 10, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 29, 2009. Claimant participated and was represented by Robert Cooper, Attorney at Law. Employer participated by Allen Eden. Exhibits A and B were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 18, 2009. The claimant was absent because of a medical procedure. He had complications from the procedure and was not released to return to work until April 16, 2009. Allen Eden called the claimant on April 14, 2009 and told him he did not have work available for him and that he was not to come back to work. Mr. Eden told the claimant again, on April 29, 2009, there was no work for him. The claimant provided a release from his doctor with no restriction, stating he could come back to work on April 16, 2009.

The claimant asked his employer if he could switch his hours to 17 hours per week as of April 1, 2009 as he was to start receiving Social Security Retirement. The employer agreed to this in principle. The employer did not recall knowing the exact date the claimant would start working the reduced hours.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 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.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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 claimant did not intend to sever his employment relationship with his employer.

871 IAC 24.26(6)b provides:

(6) Separation because of illness, injury, or pregnancy.

b. 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.

The claimant's return to the employer to offer services after the medical recovery evinces an intention to continue working. Therefore, the separation was attributable to a lack of work by the employer. The convincing evidence is that the employer agreed to allow the claimant to continuing to work for the employer at reduced hours. The employer agreed to this in January 2009. Benefits are allowed.

The administrative law judge holds that the evidence has failed to established that claimant voluntarily quit for good cause attributable to employer when claimant was absent from work due to illness and offered to return to work under the terms agreed to by the parties in April 2009.

DECISION:

The decision of the representative dated June 10, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

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