

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**DAVID CABAN**  
Claimant

**S.M. HENTGES & SONS INC**  
Employer

**APPEAL 20A-UI-10363-HP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/17/20**  
**Claimant: Appellant (2)**

---

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant David Caban filed an appeal from an August 26, 2020 (reference 02) unemployment insurance decision that denied benefits because he voluntarily quit his employment with S.M. Hentges & Sons Inc. (“S.M.”) for failing to report to work for three days in a row and not notifying his employer of the reason. The parties were properly notified of the hearing. A telephone hearing was scheduled for October 12, 2020. S.M. had not provided a copy of its 46-page exhibit to the claimant or his attorney before the hearing, so the hearing was continued to October 16, 2020. Attorney Troy Skinner represented Caban. Caban appeared and testified. Todd Christopherson and Adam Schmitz appeared and testified on behalf of S.M. Exhibits 1 through 3 and Exhibit A were admitted into the record. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development, including the fact-finding documents submitted by the parties.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

**FINDINGS OF FACT:**

On September 23, 2019, Caban commenced full-time employment as a carpenter with S.M. His immediate supervisor was James Chandler. Due to his poor driving record, S.M. determined Caban was not a candidate to drive the S.M. company vehicles.

Caban testified he sustained two work-related injuries, a heart attack, and a shoulder injury in December 2019. S.M. disputes Caban sustained work-related injuries while working for S.M. and contends Caban failed to timely report his alleged shoulder injury. Compensability of Caban’s claim for workers’ compensation benefits is not the subject of this hearing. This hearing only concerns his eligibility for unemployment benefits.

Caban testified on December 12, 2019, he was working with Chandler and he was breathing heavily and not feeling good. Caban told Chandler he was not feeling well and Caban relayed Chandler told him he needed to finish the job and Caban replied he could not. Caban drove

himself to the hospital, where he was admitted and diagnosed with a heart attack. The hospital placed Caban on light duty. He reported his restrictions to S.M. and S.M. told him no light duty work was available. Caban testified he returned to the doctor and had his restrictions removed and he returned to work.

Schmitz oversees the workers' compensation claims for S.M. Caban's attorney stipulated that the timeline set forth in Exhibit A is accurate. S.M. received information Caban was restricted to light duty work until December 18, 2020, when he was released to full duty work.

Caban testified after he returned to work he was working with a coworker, Dillion when Chandler was off for his duties with the National Guard. Caban reported he went to the back of a work truck to lift out a 175-pound jackhammer. Caban testified he slipped and fell out of the truck, landing on his right shoulder. Caban took Aleve, and continued to work the rest of the day until 1:00 p.m. or 2:00 p.m. Caban reported a few days later, he went to Broadlawns Medical Center and he received x-rays and magnetic resonance imaging, which revealed he had a torn labrum and torn rotator cuff. S.M. denies receiving information about the work injury until February 5, 2020, when he reported he injured his shoulder with a jackhammer two months ago.

The timeline prepared by S.M. indicates was a "no show" on February 7, 2020. (Ex. A) On February 17, 2020, Caban sent Chandler a text message stating he was not able to come to work that day because he was in too much pain in his shoulder from the last two days. (Ex. A) The next day, Caban sent Chandler another text message stating he could not lift his shoulder and he was not coming to work. (Ex. A) S.M. documented on the timeline that on February 18, 2020, Caban had unreported absenteeism and excessive or unauthorized termination, but he was later terminated on June 3, 2020. (Ex. A) Caban continued to communicate with Chandler about his shoulder problems. (Ex. A)

Caban received a work excuse from Broadlawns Medical Center noting he had attended an appointment on February 20, 2020, and that he was to be off work from February 17, 2020, until his appointment with orthopedics on February 25, 2020. (Ex. 1) Caban received a second work excuse on February 25, 2020, restricting him to light duty work for six weeks starting on February 25, 2020. (Ex. 1)

Caban testified Chandler came to his home on or about February 25, 2020. Exhibit A documents Chandler came to his home on February 20, 2020 to retrieve his work keys. Caban testified Chandler told him he had been discharged because he was a liability due to his medical issues and insurance. Chandler did not appear at hearing to rebut Caban's statement.

Caban testified he was willing and able to perform light duty work for S.M., noting he was restricted from lifting above shoulder level. Caban relayed S.M. had light duty work available, including picking up lumbar, sweeping, operating the skid loader and setting up the construction site. Christopherson testified S.M. provides light duty work to its employees, but Caban was not eligible for the light duty work because he had a poor driving record.

Linda Jeurissen, Payroll and HR Administrator for SM participated in the fact-finding interview before Iowa Workforce Development. Jeurissen reported Caban quit his employment on "2/19/20 – Claimant no/call/no showed 3 consecutive days after last day worked of 2/14/20." (Employer Fact-Finding Separation Details) At hearing the Christopherson testified Caban was not discharged for a three day no call, now show. The information Jeurissen provided to the agency during the fact finding hearing was false.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides an individual “shall be disqualified for benefits, regardless of the source of the individual’s wage credits: . . . .If the individual has left work voluntarily without good cause attributable to the individual’s employer, if so found by the department.” The Iowa Supreme Court has held a “voluntary quit” means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer.” *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires “an intention to terminate the employment relationship accompanied by an overt act carrying out the intent.” *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). “Good cause” for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm’n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant’s departure from employment was voluntary. *Irving v. Emp’t Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016).

871 Iowa Administrative Code 24.25(4) and (36) provide:

**Voluntary quit without good cause.** 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs “a” through “i,” and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer: . . . .

**24.25(4)** The claimant was absent for three days without giving notice to employer in violation of company rule.

**24.25(36)** The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

871 Iowa Administrative Code 24.26(6) also 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:

**24.26(6)** 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.

There is no evidence Caban was absent for three days without calling, contrary to the information provided by Jeurissen, S.M.'s human resources professional, during the fact finding hearing. The information she provided to the agency was false.

Caban testified after he injured his shoulder he was in terrible pain and he could not work. In February 2020, S.M. told Caban there was no light duty work available for him. Christopherson testified there was not any light duty work available for Caban because of his poor driving record. Caban testified there was light duty work available, including picking up lumbar, setting up the site, and sweeping. S.M. did not explain why it did not offer Caban light duty work other than driving.

Caban testified he experienced a heart attack at work and that he experienced a traumatic injury to his right shoulder while working for S.M. S.M. avers Caban voluntarily quit. Caban never returned to work after February 2020. Even assuming Caban quit and he was not discharged, he testified he injured his right shoulder when he fell while moving a jackhammer at work. After this injury, he was unable to perform his full duties. The employer presented no evidence at hearing Caban does not have an illness or injury to his shoulder or that it was not caused by or aggravated by his employment under 871 Iowa Administrative Code 24.25(36). Based on Caban's testimony, I find he sustained an injury to his right shoulder at work and that his employment ultimately ended because he was not able to perform his regular job duties due to work injury. I find his employment ended with good cause attributable to the employer. Benefits are allowed, provided Caban is otherwise eligible.

**DECISION:**

The August 26, 2020 (reference 02) unemployment insurance decision denying unemployment insurance benefits is reversed in favor of the claimant/appellant. Benefits are allowed, provided the claimant is otherwise eligible.



Heather L. Palmer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

October 20, 2020  
Decision Dated and Mailed

hlp/mh