

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WILLIAM HUCKSTADT
Claimant

ORMSBY MASONRY CONTRACTORS INC
Employer

APPEAL 21A-UI-03068-SN-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/08/20
Claimant: Appellant (1)

Iowa Code § 96.5(1)d – Voluntary Leaving (Illness/Injury)

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 12, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on March 16, 2021. The claimant participated and testified. The employer did not participate. The administrative law judge took official notice of the agency records.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without 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 was employed full-time as a bricklayer from 2011, until he was separated from employment on November 2020, when he quit. The claimant's immediate supervisors were Partner Joe Ormsby, Partner Dennis Ormsby and Partner CJ Ormsby. The claimant is 67 years old.

In 2018, the claimant started experiencing sharp pain and muscle weakness in his shoulders due to slight tears in his rotator cuffs. Since injuring his shoulders, his physician, Dr. Andrew Bries, has recommended the claimant undergo surgery. The claimant wanted to continue working, so he opted for periodic cortisone shots, which would reduce the pain for a period of time. The claimant did not ever receive restrictions regarding his shoulder injuries. In fact, Dr. Bries suggested the claimant find another occupation.

In the summer or fall of 2020, the claimant told Joe Ormsby, Dennis Ormsby and CJ Ormsby; he did not want to lay block anymore due to his shoulder injuries. With the exception of one time, the claimant was not expected to lay block from that point onward. The claimant could perform other duties despite the pain.

In the fall of 2020, the claimant's body was deteriorating from the hard labor. The claimant came to the conclusion that it would be cheaper for him to quit and rest his shoulders, than to get the surgery.

At the end of October 2020, the claimant verbally told Joe Ormsby, Dennis Ormsby and CJ Ormsby that he was resigning due to his shoulder injuries. All three partners laughed at the claimant because they did not believe he was going to quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code section 96.5(1) 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.

Iowa Admin. Code r. 871-24.26(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.

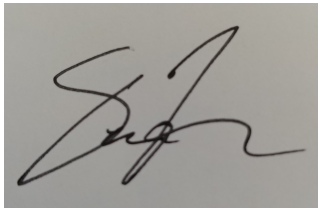
An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. *Suluki v. Employment Appeal Board*, 503 N.W.2d 402 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working

conditions must complain further if conditions persist in order to preserve eligibility for benefits. *Polley v. Gopher Bearing Company*, 478 N.W.2d 775 (Minn. App. 1991).

Inasmuch as the claimant did not have restrictions regarding his shoulder injuries he cannot show he was compelled to leave employment because of the injuries. The administrative law judge is sympathetic to the claimant's position, but it is his burden to show competent evidence that an injury compelled him to leave.

DECISION:

The January 12, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided he is otherwise eligible.

A handwritten signature in black ink, appearing to read 'S. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

March 26, 2021
Decision Dated and Mailed

smn/kmj