

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN L MOE
Claimant

APPEAL NO. 07A-UI-03176-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRIPROCESSORS INC
Employer

**OC: 02/18/07 R: 04
Claimant: Respondent (5)**

871 IAC 24.1(113) – Other Separations

STATEMENT OF THE CASE:

Agriprocessors filed a timely appeal from the March 19, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 12, 2007. Claimant Shawn Moe participated. Elizabeth Billmeyer, Human Resources Manager, represented the employer. The administrative law judge took official notice of the Agency's administrative records regarding benefits disbursed to the claimant and received Claimant's Exhibits A and B into evidence.

ISSUE:

Whether the claimant separated from the employment for a reason that makes him ineligible for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Shawn Moe commenced his full-time employment with Agriprocessors on March 19, 2006 and worked as a full-time maintenance technician. On November 16, 2006, Mr. Moe was in a non-work-related automobile accident and suffered injury to his head including a deep laceration, bone fracture extending into his sinus area, and closed head injury. Mr. Moe was hospitalized until his release on November 18, 2006. While Mr. Moe was in the hospital, he was visited by Maintenance Lead Person Kerry Nuehring. Mr. Nuehring told Mr. Moe that Mr. Nuehring had informed the employer of Mr. Moe's accident and his need to be away from the employment. Mr. Nuehring told Mr. Moe that his job would be held for him. Two weeks later, Mr. Moe spoke with Dion Branish, Lead Maintenance Supervisor. Mr. Branish told Mr. Moe that the employer needed his services, was holding his job for him, but that Mr. Moe would not be allowed to return to the employment without a full medical release. Mr. Moe continued to maintain contact with his immediate supervisors. On January 9, 2007, Mayo Clinic issued a full-medical release effective January 10, 2007. On January 12, Mr. Moe contacted Mr. Branish with regard to returning to the employment. Mr. Branish referred Mr. Moe to Maintenance Manager Tom McJonkins. Mr. McJonkins told Mr. Moe that the employer deemed the employment terminated and that Mr. Moe would have to reapply.

The employer has a policy that limits leaves of absence to four weeks unless the leave is authorized pursuant to the Family and Medical Leave Act (FMLA). Mr. Moe had not worked at Agriprocessors long enough to be eligible for FMLA leave. In December, after Mr. Moe had been away from the employment for four weeks, Human Resources Manager Elizabeth Billmeyer notified Maintenance Manager Tom McJonkins that Mr. Moe's employment was deemed terminated and that Mr. Moe would need to reapply. Prior to January 12, Mr. Moe did not know his employment was in jeopardy or had been terminated.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113), provides as follows:

All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. **Layoffs.** A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. **Quits.** A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. **Discharge.** A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. **Other separations.** Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 indicates that Mr. Moe at no time indicated an intent to quit the employment. The evidence indicates that the employer did not discharge Mr. Moe for misconduct. The evidence indicates that Mr. Moe's separation from the employment falls within the category known as "other separations," because the separation was based on Mr. Moe's inability to meet the physical standards required for the employment. A separation for such a reason would not disqualify Mr. Moe for unemployment insurance benefits. Mr. Moe is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The claims representative's March 19, 2007, reference 01, decision is modified. The claimant was not discharged nor quit. The claimant's separation from the employment was an "other separation" based solely on his inability to meet the physical standards required for the employment. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw