

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TIMOTHY S HOUCK
Claimant

APPEAL NO. 19A-UI-01755-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MACHINE TOOL ENGINEERING INC
Employer

OC: 01/27/19
Claimant: Respondent (5)

Iowa Administrative Code rule 871-24.1(113) – Other Separations
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 12, 2019, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on January 25, 2019 for good cause attributable to the employer based on a work-related illness and/or allergy. After due notice was issued, a hearing was held on March 13, 2019. Claimant participated. Kari Ungs represented the employer. Exhibits 1, 2 and 3 and Department Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUES:

Whether the employer's appeal was timely.

Whether the claimant separated from the employment for a reason that disqualifies the claimant for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time machinist until January 25, 2019, when he involuntarily separated from the employment due to a severe, work-related allergy. The claimant desired at all relevant times to continue in the employment. Due to the nature of the work environment and that allergy, the employer was unable to accommodate the medical restriction that restricted the claimant from being exposed to engine coolant. Those same medical restrictions, issued by the physician secured by the employer's worker's compensation carrier specifically linked the claimant's severe allergic response to the work environment.

The employer filed a timely appeal from the February 12, 2019, reference 01, decision on February 21, 2019, prior to the February 22, 2019 appeal deadline.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The employer's appeal was received prior to the appeal deadline and was timely. The administrative law judge has jurisdiction to rule on the merits of the appeal.

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.

Rather than established a voluntary quit or a discharge from the employment, the evidence in the record establishes a separation that falls within the unemployment insurance category known as “other separations.” The claimant did not desire to leave the employment and never gave notice of an intention to quit the employment. Due to the nature of the work environment, the employer concluded it could not accommodate the claimant’s medical restriction against exposure to engine coolant. The separation occurred due to the claimant’s permanent restriction, which amounted to a work-specific permanent disability and due to the claimant’s inability to meet the physical requirements of the work. Because the separation was neither a quit without good cause attributable to the employer nor a discharge for misconduct in connection with the employment, the separation would not disqualify the claimant for benefits or relieve the employer’s account of liability for benefits. See Iowa Code section 96.5(1) (regarding voluntary quits without good cause attributable to the employer) and Iowa Code section 96.5(2)(a) (regarding discharges for misconduct in connection with the employment). The claimant is eligible for benefits provided he meets all other eligibility requirements. The employer’s account may be charged.

DECISION:

The February 12, 2019, reference 01, decision is modified as follows. The claimant neither voluntarily quit nor was discharged from the employment. The claimant’s separation falls into the category of “other separations” and was due to his job-specific allergy/permanent disability and inability to meet the physical requirements of the employment. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer’s account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs