

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YAMBERT YAMBA KALAMBAY
Claimant

APPEAL NO. 15A-UI-08854-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

OC: 07/05/15
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 28, 2015, reference 02, 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 an Agency conclusion that the claimant had been discharged on June 23, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on August 26, 2015. Claimant Yambert Kalambay did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Michele Hawkins of Equifax represented the employer and presented testimony through Stacey Hoffman, Human Resources Lead. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO), which record indicates that no benefits have been disbursed to the claimant in connection with the claim that was effective July 5, 2015.

ISSUE:

Whether Mr. Kalambay separated from the employer for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Yambert Kalambay was employed by Nordstrom, Inc., as a full-time, seasonal packing processor at the employer's distribution center in Cedar Rapids. Mr. Kalambay began the employment on June 12, 2015 and last performed work for the employer on June 23, 2015. Shortly thereafter, Mr. Kalambay suffered back injury in a non-work-related auto accident. Mr. Kalambay notified the employer on June 26, 2015 that he would be absent due to illness, based on the injury to his back. Mr. Kalambay provided the employer with a medical excuse that indicated he needed to continue off work indefinitely due to his back injury. The employer agreed to a leave of absence, but required that Mr. Kalambay return by July 13, 2015. On July 13, 2015, the employer spoke to Mr. Kalambay about the employer's desire to have Mr. Kalambay return to the employment to assist with business needs. Mr. Kalambay advised that he was unable to return to the employment at that time. The employer told Mr. Kalambay that if he did not return, he would incur attendance points and would soon be at risk of discharge for attendance. The

employer told Mr. Kalambay that if she was discharged for attendance, he could not be rehired. The employer told Mr. Kalambay that if he resigned, he could potentially be rehired in the future. Mr. Kalambay elected to resign from the employment to preserve the option of potential rehire at some point in the future.

REASONING AND CONCLUSIONS OF LAW:

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.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

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.

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 weight of the evidence in the record indicates that Mr. Kalambay actually separated from the employment on June 26, 2015, when he presented the employer with a medical note that indicated he would need to be off work indefinitely due to the non-work related medical condition. The weight of the evidence indicates that the separation was a quit upon the advice of a licensed and practicing physician. The quit was without good cause attributable to the employer. Accordingly, Mr. Kalambay is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer is not a base period employer for purposes of the claim that was effective July 5, 2015 and has not been charged for benefits. Accordingly, the employer would have no liability for benefits that might be paid to Mr. Kalambay during the benefit year that began for Mr. Kalambay on July 5, 2015. In addition, because the separation was without good cause attributable to the employer, the employer is for now relieved of liability for benefits.

Mr. Kalambay may also requalify for benefits by fully recovering from his non-work-related injury, by returning to the employer with medical proof of full recovery, and by offering to return to the employment. If the employer at that point declines to return Mr. Kalambay to the employment, Mr. Kalambay will become eligible for benefits, provided he meets all other eligibility requirements, and the separation will at that point be deemed for good cause attributable to the employer.

DECISION:

The July 28, 2015, reference 02, decision is reversed. The claimant voluntarily quit the employment effective June 26, 2015, due to a non-work-related medical injury and without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer is for now relieved of liability for benefits.

The claimant may also requalify for benefits by fully recovering from his non-work-related injury, by returning to the employer with medical proof of full recovery, and by offering to return to the employment. If the employer at that point declines to return the claimant to the employment, the claimant will become eligible for benefits, provided he meets all other eligibility requirements, and the separation will at that point be deemed for good cause attributable to the employer.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed