IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KYLE W FRANCY Claimant	**APPEAL NO. 17A-UI-10189-JTT**
	ADMINISTRATIVE LAW JUDGE DECISION
BAZOOKA FARMSTAR INC Employer	
	OC: 07/23/17 **Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Kyle Francy filed a timely appeal from the September 29, 2017, reference 04, decision that disqualified him for unemployment insurance benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Francy voluntarily quit on August 25, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 23, 2017. Mr. Francy participated. Amanda Russell represented the employer. Exhibits 1 through 5, A and B were received into evidence.

ISSUE:

Whether Mr. Francy separated from the employment for a reason that disqualifies him for unemployment insurance benefits and 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: Kyle Francy was briefly employed by Bazooka Farmstar, Inc. as full-time welder. Mr. Francy began the employment on August 7, 2017 and last performed work for the employer on August 18, 2017. Mr. Francy's immediate supervisor was Brian Fox, Production Supervisor. Barry Wilson, Production Lead, also had supervisory authority over Mr. Francy's work. Mr. Francy's work hours were 6:00 a.m. to 4:30 p.m., Monday through Friday, and 6:00 a.m. to noon on Saturday. Before Mr. Francy began the employment, he had begun experiencing problems with one of his ankles. Mr. Francy had undergone surgery on the ankle in 2010. Immediately before Mr. Francy commenced the employment at Bazooka, Mr. Francy he was diagnosed with an infection in his ankle and commenced taking a prescription antibiotic. The welding work at Bazooka involved standing for hours.

On August 17, 2017, Mr. Francy was absent from work due to his ankle issues and properly reported the absence. Mr. Francy had hoped to get in to see the doctor that day, but was unable to secure a same-day appointment.

On Friday, August 18, 2017, Mr. Francy reported for work as scheduled. During the first half of the shift, Mr. Wilson noted that Mr. Francy was having issues moving about and appeared to be in discomfort and/or pain. Mr. Wilson engaged Mr. Francy in discussion about his ankle. Mr. Francy shared that his ankle was swollen and infected. Mr. Wilson observed that the ankle was swollen. Mr. Francy told Mr. Wilson that he thought he could finish the shift, if needed but that he really should not be on his foot for the entire shift. Mr. Wilson told Mr. Francy that he would speak with someone in the office and get Mr. Francy approved to leave work. Mr. Wilson sent Mr. Francy home at noon. Mr. Wilson directed Mr. Francy to take Saturday off, to go to a doctor to figure out what was going on with his ankle, and to let the employer know what was going on. The employer's practice is to require employees to present a medical release before they are allowed to return to work following an absence based on a medical condition.

Mr. Francy was next scheduled to work on August 21, 2017, but did not go to work that day. Mr. Francy did not make contact with the employer that day because he understood, based on Mr. Wilson's August 18 remarks, that he was not to return to work until he had seen the doctor and the doctor had released him to return to work. On August 21, Mr. Francy was evaluated by Levi Gause, M.D., an orthopedic surgeon. Dr. Gause ordered an MRI of Mr. Francy's ankle. Medical documentation of the August 21 medical appointment references Mr. Francy being off work August 17-21. The documentation also indicates, in boilerplate language, that, "If symptoms continue and the patient is unable to return to work/school/PE with the days allotted, please make an appointment with your Primary or Work Comp Physician." While Mr. Francy asserts that Dr. Gause took him off work until further notice, at least until after the MRI, the medical documentation of the August 21 appointment does not state that. Mr. Francy asserts that he and Dr. Gause were waiting for Blue Cross Blue Shield to approve payment for the MRI.

Early in the work week of August 21-26, Amanda Russell, Human Resources Generalist, telephoned Mr. Francy to obtain an update regarding his ankle and his ability to return to work. The employer had not received anything from Mr. Francy or from the orthopedic surgeon regarding the August 21 appointment. During the telephone conversation, Mr. Francy shared that he was waiting for his insurance to approve the MRI and could not return to work at that time. Ms. Russell asked Mr. Francy to keep her informed and update her if there were any changes. On Friday, August 25, Mr. Francy called Ms. Russell to advise there had been no change in his status and that he was still waiting for the MRI.

Mr. Francy was not able to undergo the MRI until September 12, 2017. On September 6, 2017, Ms. Russell telephoned Mr. Francy. Ms. Russell told Mr. Francy that the employer was filling his position, that his employment was terminated, and that he could reapply once his doctor had released him to return to the employment. Because Mr. Francy was still within his probationary period, the employer was unwilling to extend approval of his absence from the employment beyond September 6, 2017.

On September 12, 2017, Mr. Francy had a follow up appointment with Dr. Gause. At that time, Dr. Gause released Mr. Francy to return to work on September 13, 2017.

Since Mr. Francy separated from the employment, he has not returned to offer his services to the employer with proof that he has been released by his doctor to return to the employment. Nor has the employer contacted Mr. Francy to recall him to the employment. After Mr. Francy was released to return to work, and in the days leading up to an unemployment insurance fact-finding interview set during the latter part of September 2017, Mr. Francy contacted Ms. Russell to express concern that notice of the fact-finding interview referenced a discharge from the employment. During that contact Mr. Francy did not mention that he had been released to return to work and did not request to return to work. Nor did Ms. Russell ask whether

Mr. Francy had been released to return to work or whether he was interested in returning to the employment. On October 18, 2017, the employer received medical documentation that included the medical release that released Mr. Francy to return to work effective September 13, 2017. See Exhibit B.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) provides as follows:

> Separations. 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.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976). There are notable gaps in the evidence presented by each side in this case. Mr. Francy asserts that the orthopedic surgeon took him off work indefinitely effective August 21, 2017, but the medical documentation he provided for the hearing does not support that assertion. The employer elected not to present testimony from Mr. Wilson concerning his materially significant conversation with Mr. Francy on August 18, 2017.

The weight of the evidence in the record establishes a separation by discharge on September 6, 2017. The evidence in the record establishes that Mr. Francy at no time expressed an intention to sever the employment relationship. The weight of the evidence further establishes that from August 18, 2017 to September 6, 2017, the parties each behaved as if Mr. Francy was on an approved leave of absence. The weight of the evidence establishes that the employer elected to sever the employment relationship effective September 6, 2017, rather than extend the approved absence beyond September 6, 2017. This case is sufficient similar to *Prairie Ridge Addiction Treatment Servs. v. Jackson and Emp't Appeal Bd.,* 810 N.W.2d 532 (Iowa Ct. App. 2012), to find guidance in the Court of Appeals' decision in that matter. In *Prairie Ridge*, like this case, the employer elected to sever the employment relationship rather than extend a

medically-based leave. In *Prairie Ridge*, as in this case, the employer elected to terminate the employment relationship at a time when the employee had not been released by a doctor to return to work. The weight of the evidence in the present case indicates that Mr. Francy was under medical care and had not been released to return to work at the time Ms. Russell elected to end the employment. In *Prairie Ridge*, the court concluded that the employee had involuntarily separated, in other words, had been discharged for no disqualifying reason and had not voluntarily quit. The underlined administrative law judge concludes that Mr. Francy was discharged on September 6, 2017 for no disqualifying reason. Accordingly, Mr. Francy is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged. However, the administrative law judge notes that this employer is not a "base period" employer for purposes of the claim year that began for Mr. Francy on July 23, 2017 and that will end on July 21, 2018. Because this employer is not a base period in connection with Mr. Francy's current claim year, this employer will not be charged for benefits paid to Mr. Francy in the current claim year. In the event Mr. Francy establishes a new claim for benefits on or after, July 22, 2017, is deemed eligible for benefits, and if the employer is deemed a "base period employer" for purposes of that future claim, then the employer's account may be assessed for benefits in connection with that future claim.

DECISION:

The September 29, 2017, reference 04, decision is reversed. The claimant was discharged on September 6, 2017 for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be assessed for benefits as outlined above.

____

James E. Timberland
Administrative Law Judge

____

Decision Dated and Mailed

jet/rvs