

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JOSE M ALFARO

Claimant

APPEAL NO. 18A-UI-07748-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITHFIELD FRESH MEATS CORP

Employer

OC: 06/10/18

Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Jose Alfaro filed a timely appeal from the July 11, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Alfaro voluntarily quit on May 23, 2018 without good cause attributable to the employer and due to a non-work related illness or injury. After due notice was issued, a hearing was held on August 28, 2018. Mr. Alfaro participated. Rebecca Jackson represented the employer. Spanish-English interpreters Sermin Veagra and Manny Mercedes of CTS Language Link assisted with the hearing. The hearing in his matter was consolidated with the hearing in Appeal Number 18A-UI-07749-JTT. Exhibits 1 through 12 and A through E were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KCCO.

ISSUE:

Whether Mr. Alfaro separated from the employment and, if so, whether the separation disqualifies Mr. Alfaro for benefits or 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: Jose Alfaro was employed by Smithfield Fresh Meats Corporation as a full-time hog processing production laborer assigned to the loin boning area. The work was repetitive in nature. Mr. Alfaro would handle about 60 pork loins per hour. The pork loins averaged about 22.2 pounds each. Mr. Alfaro started the employment in 2016 and last performed work for the employer on May 1, 2018. Mr. Alfaro is a Spanish-speaking person. In November 2017, Mr. Alfaro suffered right shoulder injury while performing his work duties. Mr. Alfaro continues to suffer from pain and injury relating back to the November 2017 workplace injury. Mr. Alfaro initially reported his injury to the employer's nursing staff. Mr. Alfaro was subsequently referred to the employer's worker's compensation doctor. In April 2018, the worker's compensation doctor released Mr. Alfaro to return to work without restrictions. This was after the worker's compensation doctor injected Mr. Alfaro's shoulder with pain medication that relieved Mr. Alfaro's pain symptoms. Prior to being released to return to his regular duties without restrictions, Mr. Alfaro had been released to light-duty work with a five-pound lifting restriction

applicable to his right shoulder and hand. The employer accommodated this need for light-duty work by placing Mr. Alfaro in alternate work duties that were within his work restriction. At the time the worker's compensation doctor released Mr. Alfaro to return to work, the doctor advised Mr. Alfaro to return for further evaluation and treatment if his symptoms returned.

Soon Mr. Alfaro returned to his regular duties in April 2018, his shoulder and arm issues returned. However, the employer took the disingenuous position that Mr. Alfaro's symptoms could not be work related because the worker's compensation doctor had released him to return to work in April 2018 without restrictions. Mr. Alfaro's ongoing shoulder and arm issues were clearly work-related. Though Mr. Alfaro was released to return to light-duty work effective May 10, 2018 under a five-pound restriction applicable to his right shoulder and arm, the employer declined to accommodate the medical restriction, based on the employer's assertion that the medical condition was not work-related. Mr. Alfaro has at all relevant times desired to return to work with the employer and been available to perform light-duty work for the employer under the five-pound lifting restriction. The employer compelled Mr. Alfaro to commence an FMLA leave of absence. Mr. Alfaro completed the requested FMLA paperwork. When the FMLA leave period expired, the employer continued Mr. Alfaro on an unpaid, involuntary leave of absence. Mr. Alfaro continued to check in with the employer on a weekly basis as required by the employer. This continued to the time of the unemployment insurance appeal hearing on August 28, 2018. At the time of the hearing, the employer asserted that the employer had just received medical documentation releasing Mr. Alfaro to return to work without restrictions. Mr. Alfaro has not received any such advice or documentation from the treating physician.

Mr. Alfaro established an original claim for unemployment insurance benefits that was effective June 10, 2018. Iowa Workforce Development characterized Mr. Alfaro as a group 3, job-attached claimant. Mr. Alfaro has made weekly claims since he established his original claim. Because Iowa Workforce Development deemed Mr. Alfaro job-attached, Iowa Workforce Development waived the work search requirement relative to Mr. Alfaro's claim.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 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 Iowa Administrative Code rule 871-24.25.

The weight of the evidence in the record establishes that the employer laid off Mr. Alfaro effective May 10, 2018, based on a work-related repetitive use injury to his right shoulder. Mr. Alfaro did not request a leave of absence. In other words, Mr. Alfaro has been involuntarily unemployed since May 10, 2018. The employer had an obligation to provide Mr. Alfaro with reasonable accommodations that would allow him to continue in the work. See *Sierra v. Employment Appeal Board*, 508 N.W. 2d 719 (Iowa 1993). The employer declined to reasonably accommodate Mr. Alfaro's work-related injury so that he could continue in the employment and disingenuously characterized the involuntary "leave of absence" as an accommodation. Mr. Alfaro's need for reasonable accommodations based on his work-related repetitive use injury did not present an undue hardship to the employer. The employer previously demonstrated the ability to provide the accommodation without undue hardship.

Because Mr. Alfaro has been in lay-off status since May 10, 2018, Mr. Alfaro is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Mr. Alfaro has at all relevant times been able to perform work for the employer within the light-duty restrictions and available for such full-time work. Mr. Alfaro is eligible for benefits, provided he meets all other eligibility requirements.

DECISION:

The July 11, 2018, reference 01, decision is reversed. The claimant was laid off effective May 10, 2018. The claimant has remained job-attached, able to perform work for the employer within the light-duty restriction and available for such full-time work. 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/rvs