

UNEMPLOYMENT INSURANCE APPEALS

ROBERT W MEEK
Claimant

SIMPLY ESSSENTIALS LLC
Employer

APPEAL NO. 17A-UI-07017-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/11/17
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 6, 2017 reference 04, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on July 27, 2017. Claimant participated personally. Employer participated by Karen Avery.

At the hearing, both claimant and employer agreed to waive time and notice and allow for the separation issue to also be addressed by the administrative law judge.

ISSUE:

Whether claimant is able and available for work?

Whether claimant voluntarily quit with good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant began working for employer on May 20, 2017. His last day of actual work was on June 3, 2017 when claimant left work early. Claimant missed work, but called in reporting a severe earache up through June 7, 2017. On June 8, 2017, claimant was a no-call/no-show for work. Claimant stated that he was warned at that time for his absence. Claimant then stated that employer told claimant that they would call him after claimant's supervisor spoke with the human resources department. Claimant stated later in the hearing that he was terminated during the phone call.

Employer stated that claimant was a no-call/no-show for work on June 8, 2017 and when employer called claimant on that date, claimant stated that he no longer wanted to work for employer as he didn't wish to work on Saturdays.

Claimant stated that he had a major earache and it was related to other medical problems he'd had. Claimant stated that he had not been released to return to work until July 5, 2017 – the date of his fact finding interview with IWD. At that interview, he told the IWD official that he

didn't know if he'd ever be able to work again. Claimant did state that he started working at a new job within a couple of days after the interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Inasmuch as the illness was not work-related and the treating physician had not released the claimant to return to work until July 5, 2017, the claimant has not established the ability to work until after that date.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he was ill and no longer wished to work on Saturdays. Claimant gave inconsistent testimony throughout the hearing such that the administrative law judge could not determine whether claimant quit by not staying in touch with employer or, in accordance with claimant's testimony later in the hearing, he was terminated by employer on June 8, 2017. As claimant's testimony was in conflict with itself, it cannot be believed and the administrative law judge relies on the employer's version of events. As claimant did not establish that his quit was caused by actions of employer, good cause for his quit has not been shown.

DECISION:

The decision of the representative dated July 6, 2017, reference 04 is affirmed. Claimant would not be eligible to receive unemployment insurance benefits until after he was released by his doctor, which he stated was July 5, 2017.

As claimant voluntarily quit his employment without good cause attributable to employer, unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn