

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS D RENO
Claimant

APPEAL NO. 07A-UI-00926-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'BRYAN BROTHERS INC
Employer

**OC: 12/17/06 R: 03
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit
871 IAC 24.26(6)(b) – Voluntary Quit Due to Medical Condition Attributable to the Employment.

STATEMENT OF THE CASE:

Thomas Reno filed a timely appeal from the January 19, 2007, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on February 22, 2007. Mr. Reno participated. Human Resources Manager Doris Badillo represented the employer and presented additional testimony through Kurt Terrillion. The administrative law judge received Department Exhibits D-1 and D-2 into evidence.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.
Whether, before quitting, the claimant gave the employer notice of work-related health problems and that the claimant intended to quit unless those problems were corrected or the claimant was otherwise reasonably accommodated.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Thomas Reno was employed by O'Bryan Brothers as a full-time box packer from September 21, 2006 until December 21, 2006 when he voluntarily quit. Mr. Reno worked in the employer's warehouse. Dust present in the warehouse aggravated Mr. Reno's preexisting respiratory issues. Mr. Reno sought treatment from a registered nurse practitioner for an apparent allergic reaction to the dust and the registered nurse practitioner concluded that Mr. Reno's health condition was attributable to the employment. On December 21, Mr. Reno notified the employer that he needed to quit the employment. Mr. Reno indicated that his health care provider had recommended that he not continue in the employment. In November, Mr. Reno had mentioned to his immediate supervisor that he had been experiencing an allergic response to the dust in the warehouse. Prior to announcing his quit, Mr. Reno had not informed the employer that he intended to quit due to his health condition or requested that the employer make reasonable accommodations so that he could continue in the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 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.

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.

871 IAC 24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (6) Separation because of illness, injury, or pregnancy.
 - 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.

The Workforce Development rule derives from the Iowa Supreme Court's ruling in Suluki v. Employment Appeal Bd., 503 N.W.2d 402, 405 (Iowa 1993), in which the Court held as follows:

[B]efore quitting, an employee must give an employer notice of a work-related health problem and that the employee intends to quit unless those problems are corrected or the employee is otherwise reasonably accommodated. Absence such notice, the employee had left work voluntarily without good cause attributable to the employer and is not entitled to unemployment compensation benefits.

The evidence in the record indicates that Mr. Reno voluntarily quit the employment. The evidence indicates that the quit was prompted by a health condition aggravated by the employment. The evidence indicates that the quit was based on the recommendation of a licensed and practicing health care provider. The evidence indicates that Mr. Reno had

provided the employer with minimal information regarding his health condition prior to announcing his quit. The evidence indicates that prior to announcing his quit, Mr. Reno had not given the employer notice that he intended to quit unless the work conditions that aggravated his health condition were corrected or otherwise reasonably accommodated. Mr. Reno's sudden quit denied the employer a reasonable opportunity to address his health condition.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Reno voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Reno 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's account shall not be charged for benefits paid to Mr. Reno.

DECISION:

The Agency representative's January 19, 2007, reference 03, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs