

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATT ANDERSON

Claimant

TYSON FRESH MEATS INC

Employer

APPEAL 15A-UI-06494-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/15

Claimant: Appellant (1)

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

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 28, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination he voluntarily quit his employment due to a non-work related illness or injury. The parties were properly notified about the hearing. A telephone hearing was held on July 1, 2015. The claimant, Matt Anderson, participated personally. The employer, Tyson Fresh Meats, Inc., participated through Sarah Ochoa. Employer's Exhibit 1 was received and admitted into the record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Building Maintenance Team Member from December 2, 2013, and was separated from employment on May 18, 2015. On January 20, 2015, upon advice of his physician, the claimant went on medical leave for a non-work related injury. His leave was extended on multiple occasions and his last predicted return to work date was May 1, 2015.

On April 21, 2015, the employer sent the claimant a letter reminding him that his leave of absence was going to expire on May 1st and requesting he provide either a return to work certification from his physician or additional information if his leave needed to be extended. The claimant received this letter in late April and did not contact the employer. On May 19, 2015, the employer sent another letter to the claimant stating he was terminated as his leave of absence had expired and he had not contacted the employer. The claimant received the May 19th letter at the beginning of June. The claimant was released to return to work by his physician on May 21, 2015. He did not contact the employer to notify it that he had been released by his physician and offer his services.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant failed to return and offer his services upon his release to return to work from a non-work related injury.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(1), (2), (35) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

(2) The claimant moved to a different locality.

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

(b) Obtain certification of release for work from a licensed and practicing physician;

(c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

(d) Fully recover so that the claimant could perform all of the duties of the job.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The claimant's failure return to the employer to offer services after the medical recovery evinces an intention and overt act to quit his employment. The claimant argued he was unable to contact the employer as he was not earning money so he did not have a telephone or a way to get to work. However, these issues are outside of the employer's control. The claimant's separation was without good cause attributable to the employer.

DECISION:

The May 28, 2015, (reference 01) decision is affirmed. Claimant quit the employment without good cause attributable to the employer. Benefits are withheld until such time as he works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs