

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUCIEN M EVANS

Claimant

APPEAL NO. 12A-UCX-00047-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNEBAGO INDUSTRIES

Employer

OC: 04/22/12

Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Lucien Evans (claimant) appealed a representative's September 24, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Winnebago Industries (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 18, 2012. The claimant participated personally. The employer participated by Gary McCarthy, personnel supervisor. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on July 30, 2007, as a full-time production assembler fabricator. He worked until October 19, 2007, when he was deployed and served the country. The claimant returned as a disabled veteran and began work again on July 31, 2012. The claimant signed for receipt of the employer's handbook on July 30, 2007. The handbook contains a policy that states an employee will be considered to have quit if the employee is absent for three days without giving notice to the employer.

On August 1, 2012, the claimant noticed pain in his wrist when working but did not report it to the employer until August 10, 2012. The claimant told the employer he was going to see his own physician on August 20, 2012. His physician wrote him a note indicating he had severe bilateral wrist tendinitis but did not restrict him from working. The claimant provided the note to his supervisor on August 21, 2012. The supervisor was unkind, not interested in the note, and threw the note back at the claimant's face.

On August 27, 2012, the claimant notified the employer he would not appear for work because he had to care for his grandfather. The claimant did not appear for work or report his absence on August 28, 29, 30, or 31, 2012. The employer considered the claimant to have quit work

after his four unreported absences. Near the end of his shift on August 31, 2012, the claimant contacted the employer to ask about his work status. The employer notified the claimant that he was considered to have quit work. The claimant told the employer that he was going to quit anyway because he was moving to Florida, going to become a full-time student, and he was diagnosed with tendinitis. Continued work was available had the claimant not resigned.

The claimant filed for unemployment insurance benefits with an effective date of April 22 and August 30, 2012. The claimant did not move to Florida or become a full-time student.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was absent from work for four days without giving notice to the employer. The employer has a rule that if the employee is absent without notice to the employer for three days, the employee is deemed to have voluntarily quit. The claimant is deemed to have voluntarily quit based on his absence from work for four days without giving notice to the employer. There is no evidence of good cause attributable to the employer.

The second issue that the claimant addresses for his resignation is his medical condition.

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 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.

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

The claimant provided the supervisor with a note that did not list restrictions or request accommodations. Inasmuch as the claimant did not give the employer an opportunity to accommodate the claimant's medical issues prior to leaving employment, the separation was without good cause attributable to the employer. The claimant did not provide the employer with any physician's note indicating his ability to work was restricted or discuss his condition with it. The employer was unaware of the claimant's medical condition. Benefits are denied.

DECISION:

The representative's September 24, 2012 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw