

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DUANE L HAUGEN**  
Claimant

**BRIDGESTONE AMERICAS TIRE**  
Employer

**APPEAL 17A-UI-10543-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/17/17**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury  
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 5, 2017, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on October 31, 2017. Claimant participated with significant other Susan Mather. Employer participated through human resources coordinator Cara Harris, labor relations section manager Jeff Higgins, and medical business manager Pete Goshorn, R.N. Employer's Exhibit 1 was received.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time production worker for Bridgestone/Firestone through July 26, 2017. He gave the employer notice of his breathing difficulty due to the temperature extremes and humidity in the work area and was allowed to visit the medical unit to use his nebulizer as needed. The medical unit, keeps separate records from the human resource department. A month before he quit the employment Gladys Shank, M.D. at the Veterans' Administration told him to "get out" of Firestone, and referred him to private sector pulmonologist Angela Collins, M.D. to be seen more quickly than he could in the VA system. Collins told him the type of work and working conditions affected his lungs. He had pneumonia twice, in part because the work site is cold in the winter and hot in summer. Claimant relayed that information to Goshorn, who agreed. Claimant, a smoker, was diagnosed with Chronic Obstructive Pulmonary Disease (COPD) prior starting work with Bridgestone. After he told supervisor Jeff Holtan in the past year that one of his doctors told him it would be a good idea to get out of the work, Holtan said he could not believe he was still working here with his condition. Claimant took Family and Medical Leave Act (FMLA) leave for breathing issues during two or three years and missed a lot of work.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment for no disqualifying reason.

Iowa Code section 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(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:

(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.

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The claimant has not established that the injury was caused by the employment but did establish that the medical condition would be aggravated by the work duties, which are permanently prohibited by the medical restrictions. Furthermore, at least two physicians told claimant the work was not helpful to his medical condition.

While a claimant must generally return to offer services upon recovery, subparagraph (d) of Iowa Code section 96.5(1) is not applicable where it is impossible to return to the former

employment because of medical restrictions connected with the work. See *White v. Emp't Appeal Bd.*, 487 N.W.2d 342 (Iowa 1992). Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. *Shontz v. Iowa Emp't Sec. Comm'n*, 248 N.W.2d 88 (Iowa 1976). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. *Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787 (Iowa 1956).

Because claimant's medical condition was aggravated by the working conditions, the decision not to return to the employment according to the treating medical professional's advice was not a disqualifying reason for the separation.

**DECISION:**

The October 5, 2017, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left the employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs