

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GERALD M GORDON**  
Claimant

**APPEAL NO: 14A-UI-12459-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED PARCEL SERVICE**  
Employer

**OC: 11/09/14**  
**Claimant: Appellant (2/R)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 25, 2014, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on December 23, 2014. The claimant participated in the hearing. Mike Arndt, Area Human Resources Manager; Eric Krumme, Shift Manager; and Steve Hunke, Supervisor; participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time sorter and midnight over-weights for United Parcel Service (UPS) from May 11, 1988 to February 1, 2014. He voluntarily left his employment due to health issues.

The claimant suffers from a lung disease, similar to if not chronic obstructive pulmonary disease (COPD) and could no longer perform the essential functions of his job as he could not breathe when lifting and moving around. He believed he was close to being discharged because of his attendance as he has been in the hospital for one week at a time three or four times per year over the last two years. The sort manager on the claimant's overnight shift told the claimant he should contact the union and retire because he was not able to do his job. The claimant spoke to the union and human resources and retired from his position with UPS after 26 years.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with good cause attributable to the employer.

Iowa Code § 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 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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. Shontz v. IESC, 248 N.W.2d 88 (Iowa 1976). (Emphasis added). 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. IESC, 76 N.W.2d 787 (Iowa 1956). (Emphasis added).

The claimant chose to retire from UPS rather than face the likelihood of termination due to his attendance resulting from his respiratory disease which prevented him from performing the essential functions of his job. Unfortunately, the claimant's position "aggravated" his medical condition and even though the employer was "free from all negligence or wrongdoing;" the facts surrounding the claimant's separation lead the administrative law judge to conclude the claimant's separation was not disqualifying. Therefore, benefits must be allowed.

Iowa Code § 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:
  - a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.
  - b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.
  - c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected

by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Because the claimant retired, he is receiving a pension from UPS. Under Iowa Code section 96.5(5), when an individual is receiving a pension, the pension amount is deducted dollar for dollar from unemployment insurance benefits. The claimant testified he is receiving \$400 per month in pension benefits. His weekly benefit amount is \$416. Under Iowa law, however, if a claimant's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made. Iowa Code section 96.5(5). There has not been an initial determination and adjudication of that issue. Therefore, the issue of what percentage the claimant paid into his pension and how that affects his unemployment insurance benefit amount is remanded to the Claims Section of the Department for an initial determination and adjudication.

**DECISION:**

The November 25, 2014, reference 01, decision is reversed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible. The issue of what percentage the claimant paid into his pension and how that affects his unemployment insurance benefit amount is remanded to the Claims Section of the Department for an initial determination and adjudication.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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