

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWARD GREEN III
Claimant

APPEAL NO. 07A-UI-04445-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

BREWBAKER FARMS INC
Employer

**OC: 01/28/07 R: 02
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Edward Green III (claimant) appealed an unemployment insurance decision dated April 27, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Brewbaker Farms, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa, on June 5, 2007. The claimant participated in the hearing. Bill Brewbaker was present and participated in the hearing while Jim Brewbaker and David Brewbaker participated via telephone. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

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 employed as a full-time laborer from March 3, 2002 through January 11, 2007, when he voluntarily quit his employment. Brewbaker Farms is owned and operated by four brothers. During the claimant's employment with the employer, he had two work-related surgeries on each shoulder. He testified that he sustained additional injuries on his shoulder in July, August and October 2007 but reportedly told the employer he did not need any treatment. There is some question as to whether the employer was aware of these alleged injury dates, and it does not appear that any first reports of injury were completed. The claimant was in a motor vehicle accident in November 26, 2006, and he testified he used this accident to obtain treatment for his shoulder.

On January 11, 2007, the claimant presented Jim Brewbaker with a document he asked the employer to sign. The document was an application for disability benefits, and the employer was not supposed to just sign the document but was to fill it out. This disability application was not through or connected to his work for the employer. The claimant had completed most of the application, which stated that he had been away from work since January 4, 2007, even though he had been working through January 11, 2007. Further down on the application, the claimant answered that he

had been terminated on January 4, 2007, which was also noted to be his date of disability. Jim Brewbaker became angry with the claimant and told him to have Bill Brewbaker look at the document. Jim Brewbaker had previously borrowed a generator from the claimant and returned it to the claimant's house that afternoon because he was done with it and did not want to incur any further liability. When Jim Brewbaker was over at the claimant's house, he also retrieved some car parts of his that the claimant had worked on.

The claimant never returned to work after that. He called his wife on January 12, 2007, and she was working for David Brewbaker at his veterinary office. David Brewbaker answered the telephone and asked the claimant if he would help out with some cattle that day. The claimant refused by stating that he had an appointment. There was no further contact from the claimant and the employer considered that he voluntarily quit his employment. The claimant's physician completed its portion of the disability application for the claimant on January 12, 2007, which indicated the claimant was totally disabled from his occupation as of January 4, 2007.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The weight of the evidence indicates that he quit the employment and was not discharged. The claimant commented that he was "outnumbered" at the hearing, but the decision was made based upon the evidence he presented, which was confusing and inconsistent. The claimant was not able to explain some of the contradictory evidence, either. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to return to work after January 11, 2007, even after being specifically asked to work on January 12, 2007.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

DECISION:

The unemployment insurance decision dated April 27, 2007, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw