IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

	APPEAL 20A-UI-10688-HP-T
CLAY GRONEN Claimant	**ADMINISTRATIVE LAW JUDGE DECISION**
MENARD INC Employer	
	OC: 05/31/20 **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2) – Discharge due to Misconduct

STATEMENT OF THE CASE:

Claimant Clay Gronen filed an appeal from an August 28, 2020 (reference 01) unemployment insurance decision that denied benefits based upon him voluntarily quitting work on January 31, 2020, for failing to report to work for three days in a row and not notifying his employer, Menard Inc. ("Menards") of the reason. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for October 16, 2020. Gronen appeared and testified. Nathan Dieringer and Beth Muth appeared and testified on behalf of Menards. I also took administrative notice of the claimant's unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

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

FINDINGS OF FACT:

On January 16, 2020, Gronen commenced full-time employment as a garden center salesperson with Menards. Gronen's immediate supervisor was Jason Barton.

On January 20, 2020, Gronen's right leg was hurting him at work. Gronen testified he was not used to standing and walking for eight hours. Gronen called Menards on January 21, 2020 and left a message with the receptionist for Ben Hogan, the assistant manager, to call him. Gronen also called Muth in human resources.

Gronen went to the chiropractor and doctor and reported they told him he was having trouble with his sciatic nerve. Gronen reported he had never had pain like that before. Gronen spoke with Muth and she approved his request to be absent due to his medical condition.

Gronen worked for Menards on January 16, 2020, January 17, 2020, and January 20, 2020. He did not return to work after January 20, 2020.

The week of January 31, 2020, Muth called Gronen and asked him whether he could return to work part-time. Gronen reported he could not and he did not know when he would be able to return to work. Muth told him if he left and reapplied, he would be eligible for rehire. If he did not leave voluntarily, Gronen would not have been eligible for rehire.

Gronen reported he had problems with his right leg in the past, but never to the extent he did after working for Menards. Gronen believes his work aggravated his personal health condition. Gronen testified he could not work for Menards at the time of the hearing due to his leg, but he is capable of other work.

REASONING AND CONCLUSIONS OF LAW:

Muth testified she believed Gronen resigned because he was uncertain if and when he could come back to work. She reported that she offered Gronen a part-time position, but he was uncertain if he could perform the part-time position. Muth reported if Gronen left he would be eligible to reapply later. Gronen denied he resigned, or that he was discharged or subject to layoff.

Iowa Code section 96.5(1) provides an individual "shall be disqualified for benefits, regardless of the source of the individual's wage credits . . .If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The Iowa Supreme Court has held a "'voluntary quit' means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires "an intention to terminate the employment relationship accompanied by an overt act carrying out the intent." *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). "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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. Irving v. Emp't Appeal Bd., 883 N.W.2d 179 (Iowa 2016).

871 Iowa Administrative Code 24.25(36) 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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
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> **24.25(36)** The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

871 Iowa Administrative Code 24.26(6) also 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:

24.26(6) Separation because of illness, injury, or pregnancy.

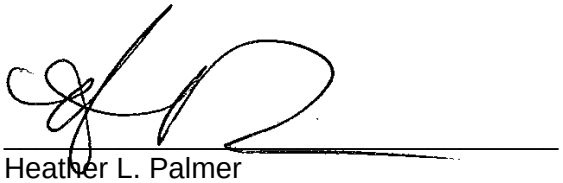
a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

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 the 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.

Gronen testified his work at Menards aggravated his right leg condition, requiring medical treatment. Menards did not present any contrary evidence at hearing to rebut Gronen's testimony. Gronen reported he is capable of engaging in sedentary work, but he would not be able to return to Menards. I find Gronen left Menards with good cause attributable to Menards because his employment conditions aggravated his personal medical condition. Benefits are allowed, provided Gronen is otherwise eligible.

DECISION:

The August 28, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed in favor of the claimant/appellant. Benefits are allowed, provided the claimant is otherwise eligible.



Heather L. Palmer
Administrative Law Judge
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October 19, 2020
Decision Dated and Mailed

hlp/scn