

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 05A-UI-02469-SWT
OC: 12/26/04 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 4, 2005, reference 01, that concluded he voluntarily quit employment without good cause. A telephone hearing was held on March 28, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Don Van Den Top participated in the hearing on behalf of the employer with witnesses, Dan Dykstra, Chuck Emery, and Stephanie Regnerus. Exhibits A and One were admitted into evidence at the hearing. The reopened hearing was held on May 19, 2005, on the issue of whether the employer was a “successor-in-interest” and whether the claimant was entitled to leave under the Family and Medical Leave Act. Prior to the hearing, the employer's attorney submitted a letter stating that the employer had decided to withdraw its objection to the claimant receiving unemployment insurance benefits. The claimant participated in the reopened hearing. The employer did not participate in the reopened hearing. Based on the evidence, the arguments of the parties, and the law, the following findings of fact, reasoning and conclusions of law, and decision are entered.

FINDINGS OF FACT:

The claimant worked as a machine operator for Infinity Plastics from July 26, 1999, to December 31, 2004. The employer, Link Manufacturing Inc., bought the assets and took over the operations of the business starting January 1, 2005. The claimant continued to work for the employer as a machine operator after January 1, 2005. There was no lapse in the continuity of the business operations when the employer took over. The business remained at the same plant. Nearly all of the workers of Infinity Plastics continue to work for the employer after January 1. The jobs, the machinery used, and the method of production were the same or very similar after January 1. The employer maintained nearly the same supervisory staff as had worked for Infinity Plastics. The products manufactured by the employer were similar to those that have been made by Infinity Plastics. When the claimant continued in employment with the employer, his insurance, vacation, and personal time off was transferred.

The claimant had suffered from shoulder pain in both shoulders for a few years and had received medical treatment for the problem. His condition worsened in November 1, 2004, and he was referred to an orthopedic specialist for treatment. In December 2004, the orthopedic specialist diagnosed the claimant with torn rotator cuffs in both shoulders. In January 2005, the claimant's doctor decided that the claimant would need rotator cuff surgery in February 2005.

The claimant went to the director of human resources and requested leave under the Family and Medical Leave Act (FMLA) for his surgery and recuperation time. The director of human resources told the claimant that he was not entitled to leave under the FMLA because he had not worked for one year for the employer and that his prior service for Infinity Plastics could not be used toward the one-year requirement. The director of human resources told the claimant that at most he would be allowed a 30-day leave. Later, the claimant told the director of human resources that the 30-day leave would not be enough to cover the time off that he needed for his medical procedure. The director of human resources insisted that was the maximum time that he could have off and the employer could not hold his job for him after that point.

Because the claimant knew that his medical procedure would require him to be off work for more than 30 days, the claimant submitted his two-weeks notice, which was effective February 3, 2005. The claimant quit his employment because he needed time off for a medical procedure and the employer would not grant him the time off that he requested.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code section 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.

871 IAC 24.26(3) 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:

(3) The claimant left due to unlawful working conditions.

The Family and Medical Leave Act (29 United States Code § 2611(4)(A)) states:

The term "employer"--

(i) means any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;

(ii) includes -

(I) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and

(II) any successor in interest of an employer. (Emphasis added).

The rules implementing the Family and Medical Leave Act (29 Code of Federal Regulations § 825.107) state:

(a) For purposes of FMLA, in determining whether an employer is covered because it is a "successor in interest" to a covered employer, the factors used under Title VII of the Civil Rights Act and the Vietnam Era Veterans' Adjustment Act will be considered. However, unlike Title VII, whether the successor has notice of the employee's claim is not a consideration. Notice may be relevant, however, in determining successor liability for violations of the predecessor. The factors to be considered include:

- (1) Substantial continuity of the same business operations;
- (2) Use of the same plant;
- (3) Continuity of the work force;
- (4) Similarity of jobs and working conditions;
- (5) Similarity of supervisory personnel;
- (6) Similarity in machinery, equipment, and production methods;
- (7) Similarity of products or services; and
- (8) The ability of the predecessor to provide relief.

(b) A determination of whether or not a "successor in interest" exists is not determined by the application of any single criterion, but rather the entire circumstances are to be viewed in their totality.

(c) When an employer is a "successor in interest," employees' entitlements are the same as if the employment by the predecessor and successor were continuous employment by a single employer. For example, the successor, whether or not it meets FMLA coverage criteria, must grant leave for eligible employees who had provided appropriate notice to the predecessor, or continue leave begun while employed by the predecessor, including maintenance of group health benefits during the leave and job restoration at the conclusion of the leave. A successor which meets FMLA's coverage criteria must count periods of employment and hours worked for the predecessor for purposes of determining employee eligibility for FMLA leave. (Emphasis added).

Based on the evidence presented in this case, the employer would be successor-in-interest in the claimant should have been entitled to FMLA leave for his medical procedure and recovery. The claimant, therefore, had good cause under the unemployment insurance law to leave employment. He notified the employer in advance of his intention to quit employment and the employer did not change its position regarding his ineligibility for FMLA leave. The claimant is eligible to receive unemployment insurance benefits based on the reasons for his separation from employment.

The parties are reminded that Iowa Code § 96.6-4 provides "A finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of the department, administrative law judge, or the employment appeal board, is binding only upon the parties to proceedings brought under this chapter, and is not binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of workers' compensation, other state agency, arbitrator, court, or judge of this state or the United States."

DECISION:

The unemployment insurance decision dated March 4, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/pjs