

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WARREN D BISHOP
Claimant

PECKHAM VOCATIONAL INDUSTRIES INC
Employer

APPEAL 16A-UI-10324-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/28/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 16, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on October 5, 2016. The claimant Warren Bishop participated and testified. The employer Peckham Vocational Industries Inc. participated through Business Services Manager Meg Dobbs. Employers Exhibits 1 through 7 were received into evidence.

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 full time as a customer service representative from October 16, 2015, until this employment ended on July 28, 2016, when he voluntarily quit.

Claimant suffers from several medical conditions that have led him to have a compromised immune system. These conditions were not caused by his employment. Claimant's medical conditions have led to him sometimes having difficulty breathing, which requires him to use an oxygen tank to keep his blood oxygen levels up. Sometime in July 2016 claimant caught a respiratory infection, which made it even more difficult for him to breathe and, at times, meant his blood oxygen levels were low. This led to several physical problems for claimant.

On July 28, 2016, claimant called in to the employer and left a message with his immediate supervisor, Karina Leefers, telling her he had to quit because he could not function. (Exhibit 1). Claimant did not consult with his doctor prior to quitting and was not advised that quitting his job was medically necessary. Claimant did not speak with the employer about possible accommodations prior to quitting. Had claimant not resigned, work would have continued to be available to him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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.

871 IAC 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.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced

separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

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).

Claimant decided to resign his position when he was having difficulty functioning due to a respiratory infection that was made worse by underlying medical conditions. Claimant did not speak to his doctor prior to resigning and was not given medical advice to resign. Claimant did not speak to the employer about his condition, or possible accommodations, prior to resigning. The employer testified work would have continued to be available to claimant had he not resigned.

Claimant has not established that the medical condition was work related or that treating medical personnel advised him to quit the job, as is his burden. Nor did he request accommodation from the employer before quitting. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The September 16, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as claimant is deemed eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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