IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CORTNEY R LOGSTON
Claimant

ADVANCE SERVICES INC
Employer

APPEAL NO. 15A-UI-02244-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/26/14
Claimant: Appellant (2)

Iowa Code Section 96.5(1)(d) – Voluntary Quit Due to Medical Issue

STATEMENT OF THE CASE:

Cortney Logston filed a timely appeal from the February 9, 2015, reference 02, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that he voluntarily quit the employment on December 12, 2014 without good cause attributable to the employer. After due notice was issued, a hearing was held on March 23, 2015. Mr. Logston participated and presented additional testimony through Jessica Heubler. Michael Payne represented the employer. Exhibits A through G were received into evidence.

ISSUE:

Whether the claimant separated from Advance Services, Inc., for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Advance Services, Inc. (ASI), is a temporary employment agency. Cortney Logston began his employment with ASI on December 2, 2014 and was placed on that day in a full-time, temporary work assignment at a Hy-Vee distribution center in Chariton. The work hours were 7:00 a.m. through 3:00 p.m., Monday through Friday. Mr. Logston last performed work in the assignment on or about December 12, 2014. On Monday, December 15, 2014, Mr. Logston was absent from work due to illness. Mr. Logston notified ASI of the absence, but did not notify Hy-Vee. The ASI staff notified Mr. Logston at that time that he needed to contact both companies if he needed to be absent from the assignment. Mr. Logston was then absent from the Hy-Vee assignment on December 16, 17 and 18 without contacting ASI or Hy-Vee. On December 18, an ASI representative telephoned Mr. Logston as he was being prepped for emergency appendectomy surgery. The ASI representative told Mr. Logston to keep in contact.

Mr. Logston had been unable for work at the Hy-Vee assignment since December 15, 2014 due to what turned out to be appendicitis. Mr. Logston had been experiencing abdominal pain since December 13 and had gone to the doctor on December 15. Mr. Logston had also been experiencing nausea and vomiting. On December 16, 2014, Mr. Logston obtained a doctor's

note that indicated he had been sick since December 13. The doctor's note also covered December 15 and 16. On December 18, 2014, Mr. Logston underwent the emergency appendectomy.

Mr. Logston was discharged from the hospital at about 5:00 p.m. on December 19, 2014. The doctor prescribed hydrocodone to be taken every six hours and instructed Mr. Logston to follow up in the outpatient clinic. Mr. Logston notified ASI that his doctor had taken him off work for six weeks. At that point, ASI deemed Mr. Logston to have voluntarily quit the assignment due to a non-work related medical issue.

On January 22, 2015, the doctor released Mr. Logston to return to work effective January 26 without restrictions. On January 23, ASI received a doctor's note indicating that Mr. Logston could return to work on January 26. ASI checked with Hy-Vee and Hy-Vee agreed to allow Mr. Logston to return for a new assignment on January 26, 2015. ASI communicated this information to Mr. Logston and Mr. Logston agreed to return to work at Hy-Vee on January 26, 2015. However, before Mr. Logston could return to work on January 26, he fell on stairs and injured his shoulder. Mr. Logston sought evaluation and treatment at an emergency room and a physician's assistant took him off work on January 26, 2015. On January 26, ASI notified Mr. Logston that because he had not returned on January 26, Hy-Vee and ASI were rescinding the offer of a new assignment.

Mr. Logston suffers from bipolar disorder and anxiety and takes prescription medications for those conditions.

Mr. Logston's claim for benefits in connection with his separation from ASI is based on an October 26, 2014 original claim. ASI is not a base period employer for purposes of the claim year that began for Mr. Logston on October 26, 2014. That claim year will end on October 24, 2015.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
> c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
> d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson

Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code § 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.

Workforce Development rule 817 IAC 24.26(6)(a) provides as follows:

> 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.

The weight of the evidence indicates that the employer, ASI, correctly concluded that Mr. Logston had voluntarily quit the first assignment at Hy-Vee due to a non-work related medical condition, after Mr. Logston was absent without notifying either company on January 16, 17 and 18 and when Mr. Logston notified ASI on January 19 that his doctor was taking him off work for six weeks. Mr. Logston had a bonafide medical condition that necessitated him being off work. Mr. Logston was off work due to advice received from a licensed and practicing physician. As of January 19, 2015, Mr. Logston was disqualified for benefits until he met one of two sets of requirements. In order to requalify for benefits, Mr. Logston could recover from his illness, provide proof to the employer that he had recovered from his illness, request his job back, and appear for work. Then, if the employer did not return Mr. Logston to the employment, Mr. Logston would be eligible for benefits, provided he met all other eligibility requirements. The second way that Mr. Logston could requalify for benefits was to earn 10 times his weekly benefit amount from new insured employment and meet all eligibility requirements. Mr. Logston did indeed provide proof to ASI that he had been released to return to work effective January 26, 2015. The employer, ASI, and the client business, Hy-Vee, initially agreed to allow Mr. Logston to return to the employment. When Mr. Logston suffered further injury on January 26 and could not return that day, ASI withdrew the offer to allow Mr. Logston to return to work. There is no indication that Mr. Logston needed to be gone from work for more than a day in connection with his January 26, 2015 fall. The note from the emergency room is specific to that day. At the point that ASI rescinded the offer to allow Mr. Logston to return to work, the separation became for good cause attributable to ASI. At that point Mr. Logston

became eligible for benefits provided he was otherwise eligible and ASI's account became liable for benefits paid to Mr. Logston. Because ASI is not a base period for purposes of the claim year that started on October 26, 2014 and that will end on October 24, 2015, ASI's account will not be charged for any benefits paid to Mr. Logston during that benefit year. However, in the event Mr. Logston establishes a new claim for benefits on or after October 25, 2015, is deemed eligible for benefits in connection with that new claim, and if ASI is at that point a base period employer, then ASI's account may be charged for benefits.

DECISION:

The February 9, 2015, reference 02, decision is reversed. The claimant voluntarily quit the employment due to a non-work related medical issue effective December 19, 2014. The claimant requalified for benefits by recovering from the illness that took him off work, by providing the employer with proof of recovery from that illness, and by offering his services. The employer initially agreed to allow the claimant to return to work on January 26, 2015, but then rescinded that offer when further injury pushed back the return-to-work date by one day. At that point, the separation became for good cause attributable to the employer and the claimant became eligible for benefits, provided he is otherwise eligible. The employer's account may be charged as outlined above.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs