

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL P ROOT
Claimant

APPEAL NO. 11A-UI-10069-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOFFREDO FRESH PRODUCE CO INC
LOFFREDO GARDENS INC
Employer

OC: 07/03/11
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
871 IAC 24.26(6)b – Employment Separation/Job-Related Injury
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated July 21, 2011, reference 01, that held the claimant voluntarily quit with good cause because of a job-related injury on April 16, 2011, and which allowed benefits. A hearing was held on August 23, 2011. The claimant participated. Michael Valez, HR manager, participated for the employer.

ISSUES:

Whether the claimant voluntary quit with good cause attributable to the employer.

Whether the claimant was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having considered the witness testimony and having considered the evidence in the record, finds that: The claimant began work as a full-time route driver for the employer on September 15, 2003. The claimant suffered a job related knee injury on February 14, 2008, and he was put on light duty. He later had arthroscopic surgery, and the injury was considered covered by workers' compensation.

Claimant experienced periods of light-duty work when he had issues with his knees up to about February 14, 2011. The employer workers' compensation provider notified the employer it no longer determined claimant's knee issues were related to the original injury and/or re-aggravation of it but due to arthritis that is not work-related.

Employer representatives called claimant into a meeting about February 14 to tell him it no longer considered his health issue (knee) to be job-related, so it no longer was required to provide light-duty work. The employer sent claimant FMLA paperwork, if he wanted to continue on medical leave. Claimant did not respond to it, as he considered the employer message was a termination from employment. When claimant did not apply for FMLA, the employer terminated him, for the record, on April 6.

After the claimant filed his unemployment claim, he reported his work and wages for labor work in five of the seven weeks through the week ending August 13.

REASONING AND CONCLUSIONS OF LAW:

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(6)b 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:

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

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.

The administrative law judge concludes that the claimant was compelled to leave employment due to a job related injury, which is considered an involuntary termination of employment and a good cause attributable to the employer effective April 6, 2011.

The claimant is allowed benefits due to his separation from employment based on a job-related injury and/or aggravation of that injury.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19,

subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes there is no availability disqualification, because the claimant has been working since his employment separation and filing his claim.

DECISION:

The department representative's decision dated July 21, 2011, reference 01, is affirmed. The claimant's separation from employment effective April 6, 2011, is considered a voluntary quit with good cause attributable to the employer. The claimant is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw