

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KRISTOPHER C WEAVER
Claimant

APPEAL NO. 18A-UI-09330-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEI SALES LLC
Employer

OC: 08/12/18
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit
Section 96.5-1-d - Voluntary Quit for Medical Reasons

STATEMENT OF THE CASE:

Kristopher Weaver (claimant) appealed a representative's August 28, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Wei Sales (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 25, 2018. The claimant participated personally. The employer was represented by Anthony Scott, Hearings Representative, and participated by Doug Carter, Human Resources Business Partner. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant performed services for the employer from March 5, 2018, to July 29, 2018, as a full-time freezer track specialist, second floor. He signed for receipt of the employer's handbook during orientation. The employer has a policy that an employee will be considered to have quit if the employee is absent for three days without giving notice to the employer. During the claimant's employment he was absent fifty-five days and tardy twenty-five times.

On May 14, 2018, the claimant provided the employer with American's with Disability Act documentation and a physician's note. The claimant requested two accommodations that the employer provided. The claimant was allowed up to four unpaid leave days per month. The employer limited his scheduled consecutive twelve hour shifts.

In July 2018, the claimant was given July 1, 5, 6, and 8, 2018, as unpaid leave days. On July 13, 2018, the claimant was notified he would be admitted into an inpatient mental health treatment facility for treatment of his bipolar one diagnosis. The claimant was in treatment from July 14 to 18, 2018. The claimant did not appear for work or report his absence from work on July 16, 17, 18, or 19, 2018.

On July 19, 2018, the employer called the claimant. The claimant told the employer about his treatment and medical concerns. The claimant did not give the employer a reason for not reporting his absence after his release. The employer told the claimant he needed to start coming to work. The claimant did not report his absences from work on July 20, 22, 23, or 25, 2018.

On July 25, 2018, the employer called the claimant to check on his status. The employer talked to the claimant in person later in the day. The employer indicated it would find out more information about the claimant's employment status but in the meantime the claimant needed to come to work

The claimant did not report his absence from work on July 26, 2018. On July 28 and 29, 2018, the claimant worked his scheduled shifts for the employer. On July 31, August 1, and 5, 2018, the claimant did not appear for work and did not call to inform the employer of the reason for the failure to appear for work. On August 6, 2018, the employer sent the claimant a letter separating him from employment.

The claimant was in an inpatient mental health treatment facility from August 7 to 15, 2018. He believes he is able to return to work with restrictions as of September 9, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work to seek inpatient mental health treatment under the advice of his physician. The claimant may not have been able to notify the employer about his leaving. The claimant has failed to provide the employer with certification that he has recovered. In addition, the claimant has failed to offer his services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

Iowa Admin. Code r. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was absent from work for three days without giving notice to the employer. The employer has a rule that if the employee is absent without notice to the employer for three days the employee is deemed to have voluntarily quit. The claimant is deemed to have voluntarily quit based on his absence from work for three days without giving notice to the employer. There is no evidence of good cause attributable to the employer.

DECISION:

The representative's August 28, 2018, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs