

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VANCE L ALLEN
Claimant

APPEAL NO. 13A-UI-05229-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

OC: 04/14/13
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Vance Allen filed a timely appeal from a representative's decision dated May 1, 2013, reference 01, which denied unemployment insurance benefits finding that he voluntarily quit work on April 16, 2013 because he did not like the work environment. After due notice, a hearing was held in Council Bluffs, Iowa on June 13, 2013 at which time the claimant participated. The employer participated by Ms. Darlene Brown, Assistant Human Resource Manager. Claimant's Exhibits A, B, C, and D and Employer's Exhibit One were received into evidence.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Vance Allen began employment with Five Star Quality Care, Inc. in December 2006. Mr. Allen accepted the position of full-time driver and was paid by the hour. The employer provides care for developmentally disabled individuals in a care facility and Mr. Allen accepted the position of full-time driver for the facility. Mr. Allen was paid by the hour. His immediate supervisor was Connie Olsen.

At the time Mr. Allen accepted employment with Five Star Quality Care, Inc., he was provided a job description explaining he would be employed working with Mentally Retarded and Developmentally Disabled Individuals in a group setting and was informed that while working in the facility, an employee might have to interact with residents who are upset or hostile. Mr. Allen accepted the employment with Five Star Quality Care, Inc. The claimant had a pre-existing back condition at the time that he accepted employment. The employer acknowledged that the claimant had a previous back condition and in turn Mr. Allen was aware of, and accepted the job, and the nature of the work.

In mid-January 2013, Mr. Allen injured his back while moving furniture that had belonged to a resident. Because of his back injury, Mr. Allen was off work under the provisions of the Family

Medical Leave Act for 12 weeks. Although fully released to return to work, Mr. Allen chose not to return to Five Star Quality Care, Inc. because he believed that due to the nature of the employment, he might jeopardize his health if he were injured in the future by a resident.

Mr. Allen asserts that he had been off work on many occasions because he had come into contact with residents and had been injured. Upon being fully released by his physician to return to his regular work on April 15, 2013, Mr. Allen chose to relinquish his position with the organization. Mr. Allen had wanted to transfer into a training position but had been told by his supervisor, Connie Olsen, that transfer was not available at the time.

Work continued to be available to Mr. Allen in his regular position with Five Star Quality Care, Inc. at the time that he was fully released on April 15, 2013. The employer's witness agrees that although there may be potential of harm from residents, incidents of that nature are not commonplace. Residents who were prone to more violent behavior are always accompanied one on one by additional staff. The claimant would not be required in any circumstance to drive a resident unless he was accompanied by additional staff.

Ms. Brown agrees that Mr. Allen had been off work on numerous occasions during his employment with the organization; however, the claimant's absences were primarily personal or transportation-related. No written requests to transfer to different work were submitted by the claimant to the company.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does not.

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 24.25(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

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. 871 IAC 24.25. Leaving because of unlawful or intolerable working

conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Services, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

In the case at hand, the evidence establishes that Mr. Allen was well aware of the nature of the work that he was accepting and he continued in the employment for a substantial period of time. Although the claimant asserts that he had been off work on numerous occasions due to resident-caused injuries, company records show absences primarily for personal reasons and transportation issues and do not show that Mr. Allen was filing required injury reports to the company. The injury that caused Mr. Allen to be off work for 12 weeks was not caused because he was assaulted by a resident but because the claimant had strained or injured his back while moving furniture. After utilizing the full 12 weeks available to him under the family medical leave act, the claimant was deemed to be fully released to return to his normal work by his physician. Mr. Allen elected not to return to work because of his personal fear that he might be injured in some manner in the future. Mr. Allen had elected not to undergo surgery for his back condition but nevertheless was certified as able to return with no limitations by his doctor.

Mr. Allen also asserts that if his immediate supervisor would have been present at the hearing that she would have verified his testimony in all respects about the danger of his job and the chance of injury. The administrative law judge notes that Mr. Allen did not subpoena the presence of his previous supervisor but relied only on his belief that the supervisor would be present at the hearing. Appearing on behalf of the employer in the hearing in this matter was the organization's Human Resource assistant who handled all paperwork, doctor's notes and attendance records. The witness, who is a 25-year employee of the facility, testified with specificity about the dates of the claimant's absences and the reasons whether Mr. Allen had previously been injured because of resident violence. Ms. Brown testified that the majority of the claimant's absences were due to personal reasons or for transportation and that few, if any, were because of Mr. Allen reporting that he had been injured on the job.

The question before the administrative law judge is not whether Mr. Allen had a good cause personal reason for deciding not to return to his employment but whether the evidence in the record has established a good cause reason that was attributable to the employer.

The administrative law judge concludes that the claimant has not met his burden of proof that he left employment with good cause attributable to the employer. Claimant knew the nature of the work when he accepted it, and there were no substantial changes in the employment. The claimant had been fully released to return to work without limitations by his physician and work continued to be available to him in his regular job position. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated May 1, 2013, reference 01, is affirmed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs