IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GREGORY J SCHULDT
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO: 13A-UI-08885-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/07/13
Claimant: Appellant (1)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

Gregory J. Schuldt (claimant) appealed a representative's July 26, 2013 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 26, 2013. The claimant participated in the hearing. Eloisa Baumgartner appeared on the employer's behalf and presented testimony from two other witnesses, Alberto Olguin and Dan Wilks. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on February 20, 2012. He worked full time as a general maintenance mechanic in the employer's Perry, Iowa facility. His last day of work was July 9, 2013.

On July 9 the claimant came in for work at his scheduled 6:00 a.m. start time. He was stopped from going to his work area and was told he needed to go to the cafeteria so that someone from human resources could discuss his attendance points with him. The employer has a 14-point attendance policy, and due to some recent occurrences, the employer was concerned that the claimant could have reached the 14-point level. However, no decision had been made regarding whether the claimant would be discharged. The claimant refused to wait for someone to come from human resources to discuss his attendance with him. Rather, he told the employer that he was quitting due to unsafe working conditions.

On July 10 and again on July 12 the claimant spoke with Olguin, the human resources manager. The claimant explained some of the absences, and Olguin agreed that the points would be cleared. He instructed the claimant to return to work on July 15, and understood the claimant to agree. The claimant did not return on July 15, but rather left a message indicating he needed to discuss workers' compensation pay for some of the time he had missed. Olguin contacted the claimant and told him to contact the plant superintendent to work out any pay issues; however, he expected the claimant to return to work. The claimant did not return to work.

The claimant was susceptible to ear infections. He seemed to be more prone to getting ear infections when he wore the ear plugs required by the employer in the warmer areas of the facility. He therefore primarily had been working in the cold side of the facility. The employer had directed that the claimant otherwise could wear ear muffs instead of ear plugs, but the claimant found he could not wear the ear muffs with the hard had required when he would do grinding or welding. About the third week of June, at his request, the claimant was promoted to another area of the facility, reporting to project supervisor Wilks. Less of this time was spent on the cold side of the facility. He had expressed some concern about wearing ear plugs in the warmer area of the facility, but had been told to use the ear muffs until the employer could figure something else out. Wilks went on vacation about the last week of June. The claimant then developed an ear infection and was off work until returning to work on July 9. Prior to July 9 he had not indicated that he would quit if the employer did not do something to address the concern with the ear plugs.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit, he would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Under some circumstances, a quit for medical or health reasons is attributable to the employer. Iowa Code § 96.5-1. Where factors and circumstances directly connected with the employment caused or aggravated an employee's illness, injury, allergy, or disease can be good cause for quitting attributable to the employer. 871 IAC 24.26(6)b. However, in order for this good cause to be found, prior to quitting the employee must present competent evidence showing adequate health reasons to justify ending the employment, and before quitting must have informed the employer of the work-related health problem and inform the employer that the employee intends to quit unless the problem is corrected or the employee is reasonably accommodated. 871 IAC 24.26(6)b.

The claimant has not presented competent evidence showing adequate health reasons to justify his quitting. Even accepting the claimant's verbal testimony, before quitting the claimant did not inform the employer that he intended to quit unless the problem was corrected or reasonably accommodated. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment is not good cause. 871 IAC 24.25(21). While the claimant's work situation was perhaps not ideal, he has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's July 26, 2013 decision (reference 02) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 9, 2013, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/css