IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

ROSS O DEWALL Claimant **JONDLE ENTERPRISES INC** Employer	**APPEAL NO. 20A-UI-07160-JTT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/17/20** **Claimant: Respondent (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 16, 2020, reference 01, decision that allowed benefits to the claimant provided he met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on May 17, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on August 4, 2020. Claimant Ross Dewall participated. Tim Jondle represented the employer and presented additional testimony through Laura Jondle. Exhibit 2 was received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record reflects no benefits have been disbursed to the claimant in connection with the May 17, 2020 original claim.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment.
Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ross Dewall was employed by Jondle Enterprises, Inc. as a part-time shop hand/mechanic. Tim Jondle and Laura Jondle, a married couple, own and operate Jondle Enterprises, Inc. Mr. Dewall began the employment in June 2019 and last performed work for the employer on November 21, 2019. The work duties involved working on semi tractor-trailer units. Tim Jondle was Mr. Dewall's supervisor. Mr. Dewall was allowed to set his own work hours and used a time-clock to document his work hours. Mr. Dewall has long-standing back issues dating back to a 2009 vertebral disc injury in his upper spine. At the time Mr. Dewall began the employment, and throughout the employment, Mr. Dewall was in the habit of seeking monthly chiropractic treatment for what he terms maintenance. Mr. Dewall's ongoing back issues were common knowledge in the workplace and something about which Mr. Dewall spoke openly.

On November 21, 2019, Mr. Dewall experienced a pain in his lower back as he lifted a tire rim off a tag axle. Mr. Dewall continued to perform his work duties. Mr. Jondle was in the workplace at the time. Mr. Jondle assisted Mr. Dewall by putting the tire back on the tag axle.

During that time, the two gentlemen engaged in casual conversation regarding back problems and a time when Mr. Jondle had thrown out his back. Mr. Dewall mentioned that he would need to go see his chiropractor. An hour or two after that interaction, Mr. Dewall clocked out and left for the day without speaking to Mr. Jondle, consistent with his usual practice.

On November 22, 2019, Mr. Dewall's chiropractor faxed a medical excuse to the employer. The chiropractor stated he had seen Mr. Dewall on November 21 and 22 for mid-back and lower-back pain, that Mr. Dewall was released to return to work on Monday, November 25, but that the chiropractor was referring Mr. Dewall to an emergency room for further evaluation.

On November 22, 2019, Mr. Dewall went to the emergency room, where he underwent x-rays that showed no injury.

On November 25, 2019, Mr. Dewall's chiropractor faxed another medical excuse to the employer. The chiropractor stated that Mr. Dewall had sought treatment due to pain, had improved, but was unable to go through range of motion without severe pain. The chiropractor stated that Mr. Dewall would be returning to the chiropractor the following day and that the chiropractor would get Mr. Dewall back to work as soon as possible.

On November 26, 2019, Mr. Dewall's chiropractor faxed a third and final medical excuse to the employer. The chiropractor stated that Mr. Dewall was experiencing lower and mid-back pain, would be unable to return to work for the remainder of the week due to the pain level, and that the chiropractor was referring Mr. Dewall to a medical doctor in lieu of continuing chiropractic treatment.

On November 26, 2019, Mr. Dewall saw a nurse practitioner at UnityPoint Clinic Family Medicine, who prescribed a muscle relaxer and the narcotic pain medication hydrocodone. The nurse practitioner scheduled a return appointment to occur in three or four days and referred Mr. Dewall for physical therapy. Mr. Dewall advises that he began physical therapy at the start of December 2019.

On December 1, Mr. Dewall sent Mr. Jondle a text message in which he stated that he had a doctor appointment.

On December 3, 2019, Selena Meaham, A.R.N.P., of UnityPoint Clinic Family Medicine Pocahontas, sent the employer a medical release, dated December 2, 2019, that stated, "It is my medical opinion that Ross O Dewall may return to work on 12/9/2019."

On December 5, 2019, Mr. Dewall sent Mr. Jondle a text message in which he stated that he had had two doctor appointments and that if he was released by the doctor, he could return to work on Tuesday morning, meaning December 10, 2019.

Mr. Dewall did not return to the employment on December 9 or 10. On December 10, 2019, Mr. Dewall sent Mr. Jondle a text message in which he stated that his doctor had ordered an MRI.

On December 17, 2019, Mr. Dewall sent Mr. Jondle a text message asking whether the employer would have light duty work for him starting Monday, meaning December 23, 2019. Mr. Dewall had provided no medical documentation referring to light-duty work. This the last contact between the parties until June 2020. Mr. Dewall wrote in the same December 17 message that he would be unable to get any shots in his back until January 9, 2020. The employer was at this point confused by the conflicting information the employer had received,

which included a note releasing Mr. Dewall to return to work, but also included Mr. Dewall's indicating that needed further evaluation and treatment that had be delayed to January 2020. Neither party further pursed the notion of Mr. Dewall returning to work to perform light duty work.

Mr. Dewall advises that UnityPoint Clinic Family Medicine was supposed to send the employer a medical excuse in mid-December 2019 that took him off work until further notice. Mr. Dewall advises that he had been referred to a pain clinic, that the pain clinic doctor declined to perform any spinal injections until after an MRI and that the initial MRI was not taken until mid-January 2020. Mr. Dewall advises that the injection increased his pain, that he underwent a second MRI in March or April, and that he has been referred to a back surgeon. Mr. Dewall advises that he still had not been released to return to work.

Toward the end of February 2020, Mr. Dewall contacted the employer's worker's compensation carrier to initiate a worker's compensation claim.

In June 2020, Mr. Dewall hired someone to collect his tools from the workplace.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
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> 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.
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> 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.
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> 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.
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> 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 Iowa Administrative Code rule 871-24.25.

This case is remarkable for the lack of medical evidence, given the alleged medical basis for the separation from the employment. The weight of the evidence establishes that Mr. Dewall voluntarily went off work effective November 21, 2019 and subsequently never returned to the employment. The last medical documentation the employer received indicated that Mr. Dewall could return to work on December 9, 2019. Mr. Dewall advises that he needed much more medical evaluation and treatment thereafter. Mr. Dewall advises that a medical provider took

him off work indefinitely as of mid-December 2019 and that he has not been released to return to work. The employer did not discharge Mr. Dewall from the employment. The employer did not layoff Mr. Dewall. The circumstances of the separation most closely align with a voluntary quit for medical reasons.

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:
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> 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:
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> 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.

Iowa Administrative Code rule 817-24.26(6) provides as follows:

> Separation because of illness, injury, or pregnancy.
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> 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.
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> 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.
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> 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.

There is insufficient evidence in the record to establish that a medical professional advised Mr. Dewall to go off work indefinitely as of mid-December 2019. The problem is the December 3, 2019 fax to the employer that released Mr. Dewall to return to the employment on December 9, 2019 and the lack of any subsequent medical documentation. There is also

insufficient evidence to establish that the back issues Mr. Dewall was dealing with in November and December 2019 and beyond were caused by or aggravated by the employment, rather than part of decade-old chronic back condition. Thus, what is left is a voluntary quit that was for personal reasons and without good cause attributable to the employer. The effective date of the claim certainly was not in May 2020, but rather some point in December 2019. Mr. Dewall is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Dewall must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The June 16, 2020, reference 01, decision is reversed. The claimant voluntarily quit the employment in December 2019 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

September 24, 2020
Decision Dated and Mailed

jet/mh

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to https://www.iowaworkforcedevelopment.gov/pua-information.