

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LYNA R KAIN
Claimant

EMCO ENTERPRISES LLC
Employer

APPEAL NO. 21A-UI-23008-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/25/21
Claimant: Respondent (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 5, 2021, reference 04, decision that allowed benefits to the claimant, provided she was otherwise eligible, and that held the employer's account could be charged, based on the deputy's conclusion that the claimant was discharged on June 19, 2021 for no disqualifying reason. After due notice was issued, a hearing was held on November 29, 2021. Claimant participated. Anthony Scott represented the employer and presented testimony through Kerri Peterson. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-23094-JTT. The administrative law judge took official notice of the following Agency administrative records: KCCO and DBRO. Though the employer is a party to both appeal numbers and Talx/Equifax is the employer representative of record in both appeal matters, Mr. Scott, who contracts with Equifax to provide services as a hearing representative asserted he only represented the employer on 21A-23008-JTT. In light of that assertion, the administrative law judge also allowed Ms. Peterson, the employer witness, the opportunity to question the claimant, but Ms. Peterson declined.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or 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: The claimant began employment with EMCO on May 19, 2021 and last performed work for EMCO on June 18, 2021. The work with EMCO was full-time. The claimant's work hours were 4:00 p.m. to 12:30 p.m. Monday through Friday. On June 18, 2021, the claimant left work early for health reasons. The claimant called in absences due to illness for each work day through July 13, 2021. The claimant then discontinued contact with EMCO. The employer had ongoing work available to the claimant.

The claimant advises she has suffered three aneurisms and was hallucinating at the time she went off work on June 18, 2021. The claimant went to an urgent care clinic and was directed to

contact her primary care physician. The next day, the claimant went to an emergency room and was again directed to contact a primary care physician. At some point in June 2021, the claimant went under the care of a doctor or the equivalent. The claimant saw the provider on a weekly basis and then on a biweekly basis. The doctor prescribed psychotropic medications. The provider never released the claimant to return to work.

No benefits have been disbursed in connection with the unemployment insurance claim.

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.

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.

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.

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.

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.

The weight of the evidence in the record establishes a voluntary quit. The employment continued through July 13, 2021. During the period of June 18, 2021 through July 13, 2021, the claimant called in daily absences due to illness. The claimant then discontinued contact with the employer, though the employer continued to have work available for the claimant. The claimant communicated her intention to sever the employment relationship and carried out that intention by ceasing contact with the employer after July 13, 2021.

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.

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

Separation because of illness, injury, or pregnancy.

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.

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 evidence in the record establishes a voluntary quit without good cause attributable to the employer. The claimant presented insufficient evidence to establish that a doctor or the equivalent advised her to leave the employment. The claimant concedes she was never released to return to work after she went off work for the extended period. The claimant never contacted the employer to request reinstatement. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount.

Because no benefits have been disbursed in connection with the claim, there is no overpayment to address.

DECISION:

The October 5, 2021, reference 04, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective July 13, 2021. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

January 4, 2022
Decision Dated and Mailed

jet/mh