

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEX CONGERA
Claimant

APPEAL NO. 11A-UI-03152-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 01/30/11
Claimant: Respondent (1-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 3, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 7, 2011. Claimant participated. Eloisa Baumgartner, employment manager, represented the employer. Kirundi-English interpreter Manzi Julius assisted with the hearing.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Alex Congera does not speak English. Mr. Congera's native language is Kirundi. Mr. Congera was employed by Tyson Fresh Meats as a full-time production worker from 2007 until January 31, 2011, when he voluntarily quit due to the lingering effects of a workplace injury and the employer's failure to provide work that fully accommodated his work restrictions. Mr. Congera had injured his shoulder. Mr. Congera was subsequently released to return to light-duty work, but was restricted from using one of his arms. The employer continued to assign Mr. Congera to work that required use of both of his arms. Mr. Congera complained to the employer repeatedly for work that would fully accommodate his medical restrictions. The employer provided different work, but not work that would fully comply with the medical restrictions. After Mr. Congera continued to suffer debilitating pain while trying to perform his work duties and after Mr. Congera concluded the employer was not going to provide work that fully accommodated his medical restrictions, he notified the employer that he was quitting the employment and separated from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d 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. 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.

Workforce Development rule 817 IAC 24.26(6)(b) provides as follows:

Separation because of illness, injury, or pregnancy.

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.

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 871 IAC 24.25.

The administrative law judge is confronted with a claimant with a significant language barrier that negatively impacts his ability to fully present his case. The administrative law judge is also confronted with an employer who claims ignorance regarding the details of a workplace injury, as well as medical evaluation and treatment, and medical restrictions, all related to the workplace injury. A reasonable person would expect Tyson Fresh Meats, Inc., to be fully versed in the work-related medical issues that prompted the claimant's voluntary quit, regardless of whether the particular employment manager has taken reasonable steps to familiarize herself with those matters. The administrative law judge concludes that the employer was fully aware of Mr. Congera's work-related medical condition and failed to provide Mr. Congera with work that he could actually perform without pain and without aggravating the work-related injury. The administrative law judge concludes that Mr. Congera quit the employment only after repeated unsuccessful attempts to get the employer to fully accommodate his medical restrictions. A

reasonable employer would have expected Mr. Congera would eventually quit. The weight of the evidence suggests the employer's actions in the matter prompted the quit.

Mr. Congera voluntarily quit the employment for good cause attributable to the employer. Accordingly, Mr. Congera is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Congera.

The evidence raises the question of whether Mr. Congera has met the work ability and work availability requirements since he established his claim for benefits. This matter will be remanded to the Claims Division so that these issues may be adjudicated.

DECISION:

The Agency representative's March 3, 2011, reference 01, decision is affirmed. The claimant voluntarily quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

This matter is remanded to the Claims Division for determination of whether the claimant has been able to work and available for work since he established his claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw