

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLAUDE W WILLIAMS
Claimant

APPEAL NO. 08A-UI-10205-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN GORP CORPORATION
Employer

**OC: 10/05/08 R: 03
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated October 24, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a hearing was held in Ottumwa, Iowa, on December 11, 2008. The claimant participated. The employer participated by Andrew Howie, attorney at law, and witnesses Dorsha Moyer, production supervisor, and Daniel Sorenson, hourly employee. Employer's Exhibits E, F, G, and H were received into evidence. Claimant's Exhibit One was received into evidence.

ISSUE:

At issue in this matter is whether the claimant quit for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from March 2008 until October 6, 2008, when he voluntarily quit employment. Mr. Williams was employed as a full-time shafter and pulley assembler and was paid by the hour. His immediate supervisor was Dorsha Moyer.

Mr. Williams left his employment with Van Gorp Corporation because of dissatisfaction with being instructed to dismantle and repair a large pulley that the claimant had previously assembled. Some aspects of the pulley were found to be defective and Mr. Williams believed that the fault was not his. The claimant was nevertheless instructed to disassemble the pulley and to repair it. The disassembly required some pounding and use of a hammer. At the time of leaving, Mr. Williams made no reference to his arm and had not previously indicated to his immediate supervisor or anyone in management that he would quit his job if he were required to hammer or disassemble the pulley in question. Mr. Williams left the facility without further contact with his immediate supervisor, only indicating to a fellow worker, Mr. Sorenson, that he was leaving.

On September 24, 2008, Mr. Williams had indicated to his immediate supervisor, Ms. Moyer, that his right arm was "hurting." Ms. Moyer immediately to the claimant to the company human resource department and scheduled a doctor's appointment so that Mr. Williams' arm could be examined. The doctor's limitation was simply that the claimant could continue using the arm but should reduce gripping, squeezing, and pounding. The claimant was not required to perform any duties of that nature until October 6, when he was required to disassemble the defective pulley. In stating his dissatisfaction with the job requirement, Mr. Williams did not indicate that he was unable to do so because of any problem with his arm.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Williams voluntarily quit his employment for reasons that were attributable to the employer. It does not.

The evidence in the record does not establish that Mr. Williams provided a notice to his immediate supervisor that he needed a specific accommodation and that he would quit his job if he were required to disassemble a pulley on October 6, 2008. The evidence in the record establishes that Mr. Williams expressed dissatisfaction with the job assignment because he felt that he was not at fault for the malfunctioning or inoperability of the pulley and cited to his supervisor a number of reasons that he felt that he was not at fault. Mr. Williams made no reference to the use of his arm or that he would leave his employment if were required to continue to the task.

The evidence in the record establishes that the claimant had been previously limited in the use of his left arm and that the employer had fully complied with the limitations imposed by the claimant physician. The evidence also establishes that when Mr. Williams had previously indicated that his right arm was "hurting," the claimant's immediate supervisor acted to document any injury, report the matter to company human resources, and to make a doctor's appointment for Mr. Williams. The doctor's limitation imposed after the September 25, 2008 visit to the doctor did not prohibit the claimant from using his right hand but only required that the claimant reduce gripping, squeezing, and pounding with his right arm. Based upon the doctor's limitation that allowed Mr. Williams to continue using his right arm, the employer was unaware that the claimant felt that the job assignment violated the restriction that had been imposed by the examining doctor. At the time of leaving, Mr. Williams requested no further accommodation and did not indicate to his immediate supervisor or anyone in company management that he would be required to quit his job if the accommodation were not granted.

The question before the administrative law judge in this case is not whether Mr. Williams had a right to quit his employment but whether the reasons for quitting were attributable to the employer and in compliance with the provisions of the Iowa Employment Security Act and the Iowa Administrative Code. While Mr. Williams' reasons for leaving were undoubtedly good from his personal viewpoint, the evidence does not establish that the reasons were attributable to the employer.

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 24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) 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 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.

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to allow the employer an opportunity to remedy the situation or offer an accommodation. Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

In as much as the claimant did not give the employer an opportunity to resolve his complaints prior to leaving employment, the separation was without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable

employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated October 24, 2008, reference 01, is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. 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. The administrative law judge remands the matter of overpayment to the Claims Division for a determination as to whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw