

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM S SCHALLA
Claimant

PETERSON CONTRACTORS INC
Employer

APPEAL 21A-UI-06611-ML-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/20
Claimant: Appellant (1)

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 14, 2021 (reference 03) unemployment insurance decision that denied benefits based upon him voluntarily quitting work because of a non-work related illness or injury which was not caused by the employer. The parties were properly notified of the hearing. A telephone hearing was held on April 16, 2021. The claimant, William S. Schalla, participated personally. The employer, Peterson Contractors Inc., participated through Cindy Olson.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began his employment on April 11, 2017. His last day physically worked on the job was July 28, 2020. Claimant worked full-time as a heavy equipment operator. Beau Holub was claimant's immediate supervisor.

Claimant has a personal medical condition which he has suffered from since before he began his employment with Peterson Contracting. In late July of 2020, claimant developed infections in his right arm and right leg as a result of said personal medical condition. As a result, claimant's physician recommended he take time off from work while taking various medications. According to claimant, he would have been physically able to return to work after fourteen (14) days.

According to claimant, his medical excuse expired in late August of 2020. Claimant did not attempt to return to work for the employer at that time.

On or about September 17, 2020, claimant contacted Mr. Holub to inform the employer of what was going on with his condition. The two discussed the possibility of claimant resigning, as well

as the possibility of claimant returning to work should his condition improve. Ultimately, claimant decided to resign. According to Ms. Olson, claimant reported that his body could no longer handle the type of work he was subjected to as a heavy machine operator. Mr. Holub informed claimant that if his health improved, and he obtained a medical release from his doctor, he would be able to reapply for his position the following season.

Claimant obtained a medical note/release from his physician sometime in March of 2021. The undersigned did not understand this to be a release tied to the original infection; rather, it appears the March, 2020 medical note was an acknowledgment by claimant's physician that claimant is physically capable of working as a heavy machine operator for the upcoming season. After obtaining the medical note, claimant filled out an application and submitted it to the employer's Iowa City location. Claimant told Beau he was interested in returning to work for the employer this season if they were looking to hire a heavy machine operator.

Claimant's decision to voluntarily resign was his own decision and was not based on any recommendation from his doctor. Claimant has recovered from his infections and he has been submitting applications for heavy machine operator positions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

While the employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). Claimant called the employer and stated that he was resigning. The separation was a voluntarily quit and not a discharge from employment.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(35) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code

section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Subsection d of Iowa Code § 96.5(1) provides an exception; however, the statute specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is fully recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346 (Iowa 1992); *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n.*, 468 N.W.2d 223, 226 (Iowa 1991)(noting the full recovery standard of section 96.5(1)(d)). In the *Gilmore* case he was not fully recovered from his injury and was unable to show that he fell within the exception of section 96.5(1)(d). Therefore, because his injury was not connected to his employment and he had not fully recovered, he was considered to have voluntarily quit without good cause attributable to the employer and was not entitled to unemployment benefits. See *White*, 487 N.W.2d at 345.

Claimant's physician kept claimant off from work for approximately 14 days in August of 2020. After those 14 days, claimant did not attempt to return to work for the employer. Instead, claimant voluntarily resigned on September 17, 2020. Claimant told the employer that his body could no longer handle the type of work he was subjected to as a heavy machine operator. Nevertheless, claimant sought and obtained a medical note from his physician, stating he was physically capable of working as a heavy machine operator, in March, 2021. The medical note/release is not related to the infection claimant suffered from in July and August. Rather, it is an acknowledgement by claimant's physician that claimant is physically capable of working as a heavy machine operator this upcoming season. Claimant failed to return to the employer and offer services after his 14-day medical excuse expired. Instead, he elected to resign.

Accordingly, although the separation was for good personal reasons, it was without good cause attributable to the employer and benefits must be denied.

DECISION:

The January 14, 2021 (reference 03) unemployment insurance decision is affirmed. Claimant is separated from the employment without good cause attributable to employer. Unemployment benefits are withheld in regards to this employer until such time as claimant is deemed eligible.



Michael J. Lunn
Administrative Law Judge
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May 5, 2021
Decision Dated and Mailed

mjl/scn