

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SERGUEI TORRES RAMOS**  
Claimant

**APPEAL 17A-UI-10130-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PACKERS SANITATION SERVICES INC**  
Employer

**OC: 08/20/17  
Claimant: Appellant (2)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury  
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 2, 2017 (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant quit his employment and failed to establish good cause for quitting. The parties were properly notified of the hearing. A telephone hearing was held on October 18, 2017. The claimant, Serguei Torres Ramos, participated. Spanish/English interpreter August (ID number 11261) from CTS Language Link also participated. The employer, Packers Sanitation Services, Inc., participated through William Ortwine, Site Manager. Claimant's Exhibit A was received and admitted into the record without objection.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a laborer, from August 30, 2017, until September 14, 2017. On claimant's final day, he went to his supervisor, Elizabeth, and presented a doctor's note stating he was allergic to the chemicals he was required to use at work. (Exhibit A) Claimant's medical note states that he needed an accommodation for this allergy. The employer told him that there was no work available for him if he could not work with chemicals. Claimant did not want to end his employment, but he needed to get away from the chemicals.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's separation was with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

Iowa Code §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.

Iowa Admin. Code r. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

Iowa Admin. Code r. 871-24.26(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 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our

supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

While a claimant must generally return to offer services upon recovery, subparagraph (d) of Iowa Code § 96.5(1) is not applicable where it is impossible to return to the former employment because of medical restrictions connected with the work. See *White v. Emp't Appeal Bd.*, 487 N.W.2d 342 (Iowa 1992). Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. *Shontz v. Iowa Emp't Sec. Comm'n*, 248 N.W.2d 88 (Iowa 1976). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. *Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787 (Iowa 1956).

Here, claimant's physician diagnosed him with an allergy to the chemicals he was required to use at work. Claimant's medical condition was understandably aggravated by his working conditions, and there was no accommodation available to him. Therefore, claimant's decision not to return to his employment, based on his medical provider's advice, was with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The October 2, 2017 (reference 03) unemployment insurance decision is reversed. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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