

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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BRIDGESTONE/FIRESTONE
NORTH AMERICAN TIRE LLC
c/o TALX UC EXPRESS
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ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-10452-D
OC: 08/29/04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Jay D. Hanson (claimant) appealed a representative's September 15, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Bridgestone/Firestone North American Tire, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on November 1, 2004. The claimant participated in the hearing. The employer failed to appear at the time and place designated in the hearing notice and did not participate in the hearing. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer on September 23, 2003. He worked full time as a tire assembler on a rotating 6:00 a.m. to 6:00 p.m. shift in the employer's Des Moines, Iowa agricultural tire production facility. His last day of work was on or about May 11, 2004.

Approximately the end of April 2004, the claimant's mother resigned from her employment with the employer. The claimant believed that his mother had been treated unfairly and effectively was forced to resign. The claimant began to become depressed and apathetic about continuing to work for the employer himself. Also at approximately this time, the claimant became separated from his then-wife. Due to his feelings of depression, the claimant stopped reporting for work and began calling in each day he was scheduled to work. After the claimant had called in for about 30 days, he was directed to speak to a human resources person. That person told him that he would not be allowed to return to work unless he could provide medical documentation that a doctor had ordered him off work. The claimant understood that this medical documentation should have been obtained within three days after he first missed work.

Since the claimant had not gone to a doctor until late May 2004, he did not attempt to obtain medical documentation to validate his absence from work. He also ceased calling in daily to report his absence. As a result, on or about June 11, 2004, the employer sent him a letter advising him that he had been absent without calling in for five days, and that if he failed to respond, he would be considered to have voluntarily quit his position. On June 16, when the claimant had not responded, the employer sent a letter advising him that his employment was terminated due to quitting by not responding. Actually, the claimant did not timely receive these letters; they were sent to an old address and then forwarded to the address the claimant had previously shared with his then-wife. She did not inform him of the letters until after July 6. When the claimant learned of the letters, he determined that it was too late to contact the employer even if he could obtain satisfactory medical evidence, so he did not pursue contacting the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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.

871 IAC 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.

Iowa Code Section 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.

The claimant did not provide medical evidence that his depression was caused by his employment and that his doctor advised him to leave his employment. Upon recovery, he did not seek to return to his employment. While the claimant may have had a good personal reason

for leaving, it was not attributable to the employer. 871 IAC 24.25(20). Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The representative's September 15, 2004 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of June 16, 2004, 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.

ld/kjf