

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCOTT SCHOFFSTALL
Claimant

WEST LIBERTY FOODS LLC
Employer

APPEAL 21A-UI-17673-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/09/21
Claimant: Appellant (1R)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Scott Schoffstall, filed an appeal from the August 5, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant voluntarily quit employment with the employer, West Liberty Foods, LLC, for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on October 4, 2021. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a spice room attendant from July 27, 2015, until this employment ended on June 14, 2021, when he resigned.

In February 2021, claimant broke his ankle. The injury did not occur at work. He was out on FMLA, which exhausted in approximately April 2021. Claimant approached the employer to inquire if he could return to work with restrictions. The employer told claimant that he likely needed to go through physical therapy before returning to avoid re-injuring himself, which could result in a workers' compensation claim. It declined to return him to work at that time. Claimant asked whether he should file for unemployment. The HR manager, Karen, said claimant could do so if he wished. Claimant filed a claim for unemployment with an effective date of May 9, 2021.

Claimant went through physical therapy as directed by the employer and was discharged with no restrictions. However, he continued to experience pain and swelling around the injured area. Because his job involved constant walking and standing, he did not feel that he had healed sufficiently to return to work with no restrictions. On June 14, 2021, claimant notified the plant

manager and his supervisor that he would quit in order to obtain a second opinion about his injury. He later learned that he would need surgery to correct torn ligaments.

Claimant's ability to and availability for work during the period prior to his resignation has not been the subject of an initial determination by Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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)).

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871—24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Claimant decided to resign in order to obtain a second opinion about his leg when he continued to experience pain and swelling at the site of the injury. At the time that he quit, he had been released to return to work without restrictions. He did not discuss potential accommodations or other adjustments to his work with the employer prior to resigning.

Claimant has not established that the medical condition was work related or that treating medical personnel advised him to quit the job, as is his burden. Nor did he request accommodation from the employer before quitting. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The August 5, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

REMAND:

The issue of claimant's ability to and availability for work during the period prior to his separation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Alexis D. Rowe
Administrative Law Judge

October 5, 2021
Decision Dated and Mailed

ar/mh