

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIM FULFS
Claimant

APPEAL 17A-UI-03651-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SETHNESS PRODUCTS CO
Employer

OC: 02/19/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury

STATEMENT OF THE CASE:

Tim Fulfs (claimant) filed an appeal from the March 21, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit his employment for personal reasons which is not a good cause reason attributable to Sethness Products, Co. (employer). The parties were properly notified about the hearing. A telephone hearing was held on April 26, 2017. The claimant participated. The employer participated through Administrative Human Resources Kathy Borkgren and Drying Plant Supervisor Jesse Kennedy. No exhibits were offered or received.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Packager beginning on August 1, 2011, and was separated from employment on July 25, 2016, when he quit. The claimant had some mental health issues for which the employer granted him intermittent job-protected leave under the Family Medical Leave Act (FMLA). During the spring of 2016, the claimant heard through another employee that Administrative Human Resources Sarah Schafer had shared some of his personal health information with his co-workers. He reported Schafer's conduct to Drying Plant Supervisor Jesse Kennedy who met with Schafer about the issue. Schafer denied it occurred. The claimant did not hear of any other personal health information being shared with other employees after the initial incident.

Approximately one week before the end of his employment, the claimant presented Schafer a note related to his absence covered by his approved leave. She told him the notes he presented needed to be more detailed or he could start receiving attendance points for his absences. The claimant had spoken to his medical practitioner about the situation. One option presented by the practitioner was that the claimant could leave his employment. However, the claimant's practitioner did not state he had to leave his employment due to his mental health.

On July 25, 2016, before he was scheduled to work, the claimant notified Kennedy that he could no longer work for the employer due to his mental health.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit without good cause attributable to employer. Benefits are denied.

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.

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.

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)).

The claimant's medical condition was not aggravated by the work he was performing. The issues he had with Schafer likely did not help his condition, but there has been no evidence presented to indicate it aggravated his condition. The record reflects that claimant's medical condition is not work-related and he is unable to perform full work duties because of the illness or injury (not because his work duties caused or aggravated his illness) and, for unemployment insurance benefits purposes, the employer is not obligated to accommodate a non-work related medical condition. Accordingly, although the separation was for good personal reasons, it was without good cause attributable to the employer and benefits must be denied.

Even if the claimant's medical condition was aggravated by work, he would still not be entitled to unemployment insurance benefits. The claimant's health care provider gave him an option of leaving his employment, but did not advise him that he needed to leave his employment. Additionally, he did not give the employer notice that the intermittent leave accommodation he received was inadequate and he would quit unless he was provided additional accommodations to assist him with his ability to work.

DECISION:

The March 21, 2017, reference 01, unemployment insurance decision is affirmed. The claimant voluntarily quit his employment without good cause attributable to employer. Benefits are withheld until such time as he works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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