

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

DENVER J AWTRY
Claimant

APPEAL NO. 18A-UI-11290-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDERAL EXPRESS CORP
Employer

OC: 10/07/18
Claimant: Appellant (5R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Denver Awtry filed a timely appeal from the November 7, 2018, reference 02, decision that held he was disqualified for benefits and that the employer's account would not be charged, based on the deputy's conclusion that Mr. Awtry voluntarily quit on April 27, 2018 due to a non-work related illness or injury. After due notice was issued, a hearing was held on December 4, 2018. Mr. Awtry participated. Bettie Buchanan of Equifax represented the employer and presented testimony through Chuck Williams. The hearing in this matter was consolidated with the hearing in Appeal number 18A-UI-11291-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit A into evidence.

ISSUE:

Whether Mr. Awtry's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Denver Awtry was employed by Federal Express Corporation (FedEx) as a full-time courier from February 2018 until April 27, 2018, when he voluntarily quit due to a non-work related illness. Mr. Awtry's work hours were 6:30 or 7:00 a.m. to 4:00 or 4:30 p.m., Monday through Friday. Chuck Williams, Operations Manager, was Mr. Awtry's immediate supervisor. Mr. Awtry's courier work duties were physically demanding and included substantial stair climbing. On April 12, 13 and 16, 2018, Mr. Awtry was absent due to illness and with proper notice to the employer. Mr. Awtry sought medical evaluation of his illness and was diagnosed with asthma. On April 17, 2018, Mr. Awtry performed his work duties for a couple hours and then notified Mr. Williams that he was putting in his two-week notice. Mr. Awtry told Mr. Williams that his last day in the employment would be April 27, 2018. Mr. Awtry told Mr. Williams that he was still not feeling well and was unable to perform the work duties. Mr. Awtry did not provide the employer with medical documentation and did not request workplace accommodations in connection with his illness. Mr. Awtry's decision to leave the employment was not based on advice from a doctor. The employer continued to have work for Mr. Awtry at the time he separated from the employment. In May 2018, Mr. Awtry was hospitalized and diagnosed with heart disease. Mr. Awtry learned at that time that the previous diagnosis of asthma was a misdiagnosis of his

condition. Mr. Awtry has never been released by a doctor to return to the employment and has not attempted to return to the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 Administrative Code rule 817-24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record establishes an April 27, 2018 voluntary quit that was without good cause attributable to the employer. Mr. Awtry voluntarily quit the employment due to a non-work related health condition that he believed at the time of the separation to be asthma. Mr. Awtry's decision to leave the employment was not based on advice from a licensed, practicing medical professional. Mr. Awtry provided no medical documentation to the employer to substantiate a need to leave the employment due to a medical condition. Mr. Awtry presented no medical documentation for the administrative law judge's consideration in connection with the appeal hearing. Mr. Awtry may have had compelling personal reasons for leaving the employment. Because the quit was without good cause attributable to the employer, the quit disqualifies Mr. Awtry for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Awtry must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The November 7, 2018, reference 02, decision is modified as follows. The claimant voluntarily quit the employment effective April 27, 2018 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

In light of the present decision regarding the claimant's April 27, 2018 disqualifying separation, this matter is remanded to the Benefits Bureau for determination of whether the claimant was overpaid benefits in connection with a claim during the benefit year that started October 8, 2017 and that ended October 6, 2018.

This matter is also remanded to the Benefits Bureau for determination of whether the claimant has been able to work and available for work during all relevant benefit weeks in connection with the original claim that was effective October 7, 2018 as well as in connection with the preceding benefit year.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs