

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

LAVERNE E FRANZEN
105 HILLSIDE DR
ST LUCAS IA 52166

REICKS DALE
DALE REICKS
1020 PENBROKE AVE
LAWLER IA 52154

Appeal Number: 06A-UI-03677-JTT
OC: 02/26/06 R: 04
Claimant: Appellant (2)

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)(c) - Leaving Employment for the Necessary and the Sole Purpose of Taking Care of an Immediate Family Member

STATEMENT OF THE CASE:

Claimant Laverne Franzen filed a timely appeal from the March 22, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on April 19, 2006. Claimant participated. Operations Manager Lois Buchheit represented the employer. Exhibit One was received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Laverne Franzen was employed by Dale Reicks Farms as a part-time seasonal truck driver until May 30, 2005, when he left the employment to care for his wife, who was preparing to undergo hip replacement surgery. At the beginning of May, Mr. Franzen had spoken with owner Dale

Reicks regarding the need to leave the employment to care for his wife, and Mr. Reicks told Mr. Franzen to take whatever time he needed. Mrs. Franzen underwent her surgery on June 2 and was released to return to her work as a school bus driver shortly before school started in August. If Mr. Franzen had not been able to care for his wife, Mrs. Franzen would have required nursing home care while she recuperated from her hip replacement surgery.

In the middle of August, Mr. Franzen contacted the employer and spoke with Operations Manager Lois Buchheit. Mr. Franzen told Ms. Buchheit that he was ready to return to the employment. Ms. Buchheit told Mr. Franzen that the employer did not have work for Mr. Franzen to do. Four days later, Mr. Franzen left a message on Mr. Reicks' cell phone, in which he notified Mr. Reicks that he was ready to return to the employment. Mr. Reicks did not respond to the message. A week later, Mr. Franzen left a similar message on Mr. Reicks' cell phone. Mr. Reicks did not respond to the message. On September 5, Mr. Franzen left a similar message on Mr. Reicks business phone. Mr. Reicks did not respond to the message. Between the day that Mr. Franzen left the employment to care for his wife and the day Mr. Franzen contacted the employer to advise he was ready to return to work, Mr. Franzen did not accept any other employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Franzen's voluntary separation from the employment for good cause attributable to the employer. It does.

Iowa Code section 96.5-1-c 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

871 IAC 24.26(8) provides as follows:

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:

24.26(8) The claimant left for the necessary and sole purpose of taking care of a member on the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or by marriage.

The evidence in the record establishes that Mr. Franzen did, in fact, leave the employment for the necessary and sole purpose of taking care of his wife and, immediately upon her recovery, returned to the employer to offer his services. The employer did not have any work for Mr. Franzen and Mr. Franzen had not accepted other employment in the meantime. Based on the evidence in the record and a legal authority cited above, the administrative law judge concludes that Mr. Franzen's voluntary separation from the employment was for good cause attributable to the employer. Accordingly, Mr. Franzen is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Franzen.

DECISION:

The Agency representative's decision dated March 22, 2006, reference 02, is reversed. The claimant voluntarily left the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

jt/kkf