IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

PATRICK G BREHM
Claimant

ICS – GREAT PLAINS LLC
Employer

APPEAL NO. 18A-UI-01292-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/31/17
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Patrick Brehm filed a timely appeal from the January 25, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Brehm voluntarily quit without good cause attributable to the employer. After due notice was issued, a hearing was held on February 21, 2018. Mr. Brehm participated. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate.

ISSUE:

Whether Mr. Brehm'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: Patrick Brehm was employed by Industrial Container Services – Great Plains, L.L.C. as a full-time laborer from June 2017 until January 3, 2018, when he voluntarily quit. The employer produces and recycles 300-gallon industrial "bottles." Mr. Brehm primarily worked in the recycling plant. Jeremy Smith was Facility Manager. Floor supervisor Valentine and Enrique (last names unknown) assisted in running the recycling plant. Floor supervisor Luiz (last name unknown) assisted in running the bottle manufacturing plant. Mr. Brehm's usual work hours were 5:00 a.m. to 3:30 p.m., Monday through Friday.

Multiple times during the period of employment, Mr. Brehm was exposed to unsafe working conditions. The industrial-sized bottles that the recycling facility received contained the remains of industrial chemicals, including industrial acids. As part of the recycling process, ISC employees would have to empty and consolidate the contents of the bottles. On two occasions, that process triggered a chemical reaction that quickly produced a chemical plume inside the recycling plant. This happened shortly after Mr. Brehm began in the employment and again in December 2017. In both instances, the supervisor had employees return to work in the affected area of the plant soon after the chemical reaction, which caused Mr. Brehm concern for his safety. The employer provided employees with disposable masks that would likely not protect employees from inhaling the industrial chemicals. After the first chemical reaction and plume,

Mr. Brehm was sufficiently concerned for his safety that he purchased upgraded personal protective equipment that he thought would better protect him than the equipment the employer provided. After the first chemical reaction and plume, Mr. Brehm was sufficiently concerned for his safety that he began wearing one of the few more-substantial respirators that the employer made available. After Mr. Brehm had worn the more-substantial respirator on a daily basis for a couple weeks, the employer told him that he could not continue to wear the respirator unless he underwent a lung stress test. For safety reasons, Mr. Brehm wanted to continue wearing the more substantial respirator. Mr. Brehm asked the employer to arrange a lung stress test so he could continue to wear the respirator, but the employer never arranged a lung stress test for Mr. Brehm.

During the period of employment, Mr. Brehm developed significant skin irritation in connection with the employment. In August 2017, Mr. Brehm suffered a second degree chemical burn to his ankle when liquid chemical made its way inside Mr. Brehm's work boot. The employer arranged for Mr. Brehm to see a doctor, who prescribed medication to address the chemical burn. The ankle injury subsequently healed over the course of several weeks, but left a scar. In November 2017, Mr. Brehm developed substantial skin irritation and reddish discoloration on both of his hands and arms. Mr. Brehm eventually sought medical evaluation, but the skin irritation remained through the end of the employment. Mr. Brehm's doctor left to Mr. Brehm's discretion the decision of whether to remain with the employment.

Mr. Brehm suffered injury to his hand on December 8, 2017, when a coworker accidentally directed a power washer water stream at Mr. Brehm's hand as Mr. Brehm manipulated the object being sprayed with the power washer. Mr. Brehm and a coworker administered first aid for the wound. Facility Manager Jeremy Smith was present for that and offered medical treatment, which Mr. Brehm declined.

Mr. Brehm did not present the employer with any medical documentation to support his need for reasonable workplace accommodations due to a medical condition.

On January 3, 2018, the final day of the employment, Mr. Brehm's hands were hurting as Mr. Brehm attempted to seat industrial-sized containers in corresponding "cages." To seat the container in the cage, Mr. Brehm had to lift the container and drop it into the cage. Mr. Brehm found that he was constantly hitting his hands against the cage while performing the work. Mr. Brehm altered the production steps by tipping the cage on its side sliding the container into the cage. A floor supervisor, Enrique (last name unknown), was operating a forklift nearby and stopped to tell Mr. Brehm he needed to follow the standardized production steps to avoiding slowing production. After this interaction, Mr. Brehm then walked off the job at about 7:00 a.m. Mr. Brehm formalized his quit the next day.

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:
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> 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.

Workforce Development rule 817 IAC 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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005).

When a claimant left the employment due to unsafe working conditions, the quit is with good cause attributable to the employer. See Iowa Administrative Code rule 871-24.26(2).

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.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law notes the employer's absence from the February 21, 2018 appeal hearing. The employer presented no testimony to rebut Mr. Brehm's testimony regarding the working conditions or other concerns.

The evidence fails to establish a voluntarily quit for good cause attributable to the employer based on Mr. Brehm's medical condition. The weight of the evidence establishes that the employment caused and/or aggravated Mr. Brehm's ongoing skin irritation issues. However, the evidence does not establish that Mr. Brehm presented the employer with medical documentation supporting his need for reasonable accommodations based on a medical condition. Mr. Brehm did not notify the employer that he would quit the employment if the employer did not provide him with reasonable accommodations in connection with his medical condition. The weight of the evidence establishes that Mr. Brehm's decision to quit was not based on advice from a licensed and practicing physician. Mr. Brehm testified that his doctor left it to his discretion to decide whether to remain in the employment or seek other employment.

The evidence in the record establishes a voluntary quit for good cause attributable to the employer based on unsafe working conditions. Mr. Brehm had twice been exposed to an airborne chemical plume inside the plant. The weight of the evidence establishes that the employer provided an unsatisfactory and unsafe response to those issues by expecting Mr. Brehm and others to return to working in the affected area unreasonably soon after the chemical reaction and plume event. The weight of the evidence establishes that Mr. Brehm was reasonably concerned for his respiratory and general health in light of these incidents, reasonably requested to wear an effective respirator, but was denied the use of the effective respirator after two weeks. The weight of the evidence establishes that the employer's daily practices, which included handling and comingling toxic chemicals, further exposed Mr. Brehm and others to unreasonable risk of injury. These concerns continued up to the time of the separation. Based on the voluntary quit due to unsafe working conditions, Mr. Brehm is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The January 25, 2018, reference 01, decision is reversed. The claimant voluntarily quit the employment due to unsafe working conditions and with 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.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs