

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES O MARTINDALE JR
Claimant

APPEAL NO. 06A-UI-10367-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSTER, MERRILL J ET AL
Employer

**OC: 10/17/06 R: 02
Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 17, 2006, reference 04, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on November 8, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Michael McEnroe, attorney at law. Shirley Cornelius participated in the hearing on behalf of the employer with witnesses, Steve Shoemaker and Brad Eiklenborg. Exhibits 1 and 2 and A through E were admitted into evidence at the hearing.

ISSUE:

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

FINDINGS OF FACT:

The claimant worked full time for the employer as a feed mill operator and truck driver from September 13, 2005, to May 1, 2006. He was off work from May 1 to August 14, 2006, because of a work-related injury to his ankle that he received on May 1, 2006.

He was released to return to work by a doctor on August 14, 2006, with a restriction against climbing or using a ladder. On August 22, 2006, the claimant hurt his ankle again when he slipped while climbing over a fence on a farm where he was delivering feed.

The claimant went to the doctor on August 23, 2006. The doctor took him off work on August 23, 2006, due to his ankle injury but released him to return to work on August 24 with the restriction that he not work over an eight-hour day. The claimant signed the work release.

After leaving the doctor's office, the claimant was convinced that the employer would not have any work he was able to do with his ankle condition. He went into the office and spoke with the

secretary of the company, Shirley Cornelius. He told Cornelius that he could no longer work for Oster Farms. He gave Cornelius the company credit card and cellular phone. Before he left, Cornelius had him sign a statement in which Cornelius wrote down that the claimant had "informed me (Shirley Cornelius) that he could no longer work for Oster Farms."

The claimant has not presented evidence that it was impossible for him to continue in employment due to a serious health danger. He did not inform the employer that he intended to quit employment unless his condition was accommodated. The claimant has not contacted the employer since August 23, 2006, about returning to work or taking a leave of absence.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code section 96.5-1 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.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant contended that when he went in on August 23, 2006, he told Cornelius that he could no longer perform his assigned job. This testimony is contradicted by the testimony of Cornelius and Brad Eiklenborg and the statement that the claimant signed on August 23, 2006. The employer's evidence is more credible.

The unemployment insurance rules provide that a claimant is qualified to receive benefits if compelled to leave employment due to a medical condition attributable to the employment. The rules require a claimant: (1) to present competent evidence that conditions at work caused or aggravated the medical condition and made it impossible for the claimant to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related medical condition and that he intends to quit unless the problem is corrected or condition is reasonably accommodated. 871 IAC 24.26(6)b.

While the evidence establishes the claimant was injured at work, he quit employment without satisfying the requirements of 871 IAC 24.26(6)b. There is no evidence that it was impossible for him to continue in employment due to a serious health danger. He did not inform the employer that he intended to quit employment unless his condition was accommodated. He has also not satisfied the requirements of Iowa Code section 96.5-1-d, which provides that individual is qualified to receive benefits if he: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that he needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but his regular work or comparable suitable work was not available.

DECISION:

The unemployment insurance decision dated October 17, 2006, reference 04, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw