

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JORGE GONZALEZ
Claimant

AGREQUIP INC
Employer

APPEAL 19A-UI-05827-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/23/19
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On July 22, 2019, the claimant filed an appeal from the July 18, 2019, (reference 03) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 14, 2019. Claimant participated personally and through a Spanish interpreter with CTS Language Link. Employer did not register for the hearing and did not participate.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in 2005. Claimant last worked as a full-time punch press machine operator. Claimant was separated from employment on or about April 1, 2019, when he resigned.

Claimant's last day of work was March 6, 2019. On that date, claimant injured his right leg at work. Claimant reported the injury to employer, but has not filed a claim for workers' compensation benefits.

Claimant was absent on March 7 and 8, 2019, due to the injury. Claimant reported his absence to the employer by leaving a voice message for the manager.

Claimant was hospitalized on March 9, 2019, because the leg became infected. Claimant was at the hospital for 15 or 16 days. Claimant left employer a voice message stating he was in the hospital.

When claimant was discharged from the hospital, he was released to return to work with no restrictions.

At the beginning of April 2019, claimant called his manager and left a voice message stating he was ready to return to work. Claimant did not hear back from employer.

Claimant did not go into employer's place of business to attempt to learn his job status until the middle of May 2019. By that time, employer informed claimant that it considered his employment to have ended.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether claimant resigned or was discharged by employer. The employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In this case, claimant resigned when he failed to make contact with employer when he was discharged from the hospital and released to return to work. A reasonable person who wished to maintain employment would have tried to contact employer more than one time upon release. When claimant finally went into the workplace in May, he was able to talk to employer about his job status. Claimant did not give a good reason for not going into employer's business earlier. Claimant resigned.

The next issue is whether claimant resigned with good cause attributable to employer.

Iowa Code section 96.5(1) 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

Under Iowa Administrative Code 871-24.26(6):

The following are reasons for a claimant leaving employment with good cause attributable to the employer:

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 the 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 comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

In this case, claimant did not have a doctor's recommendation to resign. Instead, claimant was off work for a brief period of time before he was released to return to work. Claimant did not return to employer to offer his services.

Claimant has not established he was separated with good cause attributable to employer. Therefore, benefits must be denied.

DECISION:

The July 18, 2019, (reference 03) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

cal/scn