

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD R KING
Claimant

APPEAL NO. 17A-UI-07821-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**TAPESTRY SENIOR LIVING OF MARION
VILLAGE RIDGE**
Employer

OC: 07/16/17
Claimant: Appellant (1)

Iowa Code Section 96.5(1)(d) – Voluntary Quit Due to Non-work Related Illness

STATEMENT OF THE CASE:

Richard King filed a timely appeal from the July 31, 2017, reference 01, decision that disqualified him for benefits and that indicated the employer's account would not be charged for benefits, based on the claims deputy's conclusion that Mr. King had voluntarily quit on June 2, 2017 due to a non-work related medical condition and without good cause attributable to the employer. After due notice was issued, a hearing was held on August 18, 2017. Mr. King participated. Angie Thomas, Human Resources Manager, represented the employer. Exhibit A was into evidence.

ISSUE:

Whether Mr. King separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Richard King was employed by Tapestry Senior Living of Marion as a full-time Facilities Manager and Technician for Village Ridge and Village Place in Marion. Mr. King began the employment in 2009 and last performed work in the employer on May 24, 2017. Diana Niemeyer, Executive Director, was Mr. King's immediate supervisor. On May 24, 2017, Mr. King suffered a stroke while at work. Mr. King was hospitalized for a few days. Mr. King lost feeling on his left side, but subsequently recovered full function of his left side. When Mr. King was discharged from the hospital, the discharge instructions included a follow up appointment with his physician on June 2, 2017, and referral to physical therapy. Mr. King and the employer were in regular contact. The employer was aware of Mr. King's previously diagnosed congestive heart disease. When Mr. King met with his doctor on June 2, 2017, the physician advised Mr. King that Mr. King would be need to go off work for a year. Mr. King notified the employer of his doctor's recommendation. Mr. King asked the employer whether the employer desired to discharge him from the employment or whether he should quit. Mr. King subsequently notified the employer that he was quitting the employment due to his medical condition. Both parties hope that Mr. King will be released to return to the employment in the future. In the meantime, Mr. King has applied for disability benefits with the support of his physician. Mr. King has not been released to return to the employment and has not returned to the employer to offer his services.

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.

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.

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 a voluntary quit that was effective June 2, 2017. The quit was due to a non-work related illness and was upon the advice of a licensed and practicing physician. Mr. King let the employer know of his need to separate from the employment for a year. Since the separation, Mr. King has not recovered from his stroke to a sufficient degree to

be released by his physician to return to the employment. Because Mr. King has not recovered or been released to return to the employment, Mr. King has not returned to the employer to offer his services.

The law deems the June 2, 2017 separation to be a voluntary quit without good cause attributable to the employer. The voluntary quit disqualifies Mr. King for unemployment insurance benefits until one of two conditions for requalification are satisfied. The first path is the one that applies to most disqualified claimants. That is that Mr. King is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. King would have to meet all other eligibility requirements.

Due to the medical basis for the separation, and the fact that the separation was upon the advice of a licensed and practicing physician, there is a second path to requalification available to Mr. King. Mr. King would need to recover from his illness and be released by his doctor to return to the employment. If at that point, Mr. King returns to the employer with proof of his recovery, offers to return to the employment, and the employer does not make the work available, the separation would at that point be deemed for good cause attributable to the employer and Mr. King would be eligible for benefits, provided he meets all other eligibility requirements. In addition, the employer's account could at that point be charged for benefits.

DECISION:

The July 31, 2017, reference 01, decision is affirmed. The claimant voluntarily quit the employment on June 2, 2017 without good cause attributable to the employer. The quit was due to a non-work related medical condition and was upon the advice of licensed and practicing physician. 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 account will not be charged.

The claimant may also requalify for benefits by recovering from his illness, by being released by his doctor to return to the employment, by returning to the employer to request return to the employment with proof of recovery from the illness, and by being refused return to the employment. If those conditions are satisfied, the separation will be deemed for good cause attributable to the employer, the employer's account will be subject to charge, and the claimant will be eligible for benefits, provided he meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs