IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

WADE D HOLTZMAN
Claimant

FOLIENCE INC
Employer

APPEAL NO. 19A-UI-04621-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/12/19
Claimant: Appellant (5/R)

Iowa Code Section 96.5(1)(d) – Voluntary Quit Due to Non-Work Related Medical Condition

STATEMENT OF THE CASE:

Wade Holzman filed a timely appeal from the June 3, 2019, reference 01, decision that held he was disqualified for benefits and that the employer's account would not be charged for benefits, based on the deputy's conclusion Mr. Holtzman was discharge on May 20, 2019 due to dishonesty in connection with his work. After due notice was issued, a hearing was held on July 2, 2019. Mr. Holtzman participated. Jamie Ricklefs represented the employer. Exhibits 1, 2 and 3 were received into evidence. Mr. Holtzman waived any defects in the hearing notice.

ISSUES:

Whether Mr. Holtzman was discharged for misconduct in connection with the employment.

Whether Mr. Holtzman voluntary quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Wade Holtzman was employed by Folience, Inc. as a full-time Material Handler. Mr. Holtzman began the employment in 2009 and last performed work for the employer on November 27, 2018. Mr. Holtzman suffered injury in an automobile accident when he was in high school and continues to suffer back pain as a result of that initial injury. Toward the end of November 2018, Mr. Holtzman's ongoing and intense back pain prompted his chiropractor to take him off work indefinitely. Mr. Holtzman applied for a leave of absence under the Family and Medical Leave Act and the employer approved an FMLA leave. When Mr. Holtzman's chiropractor completed the FMLA Certification of Health Care Provider for Employee's Serious Health Condition, the chiropractor left blank the return to work date. There was at that time no anticipated date by which Mr. Holtzman would be able to return to work. At the time Mr. Holtzman exhausted all available FMLA leave effective February 21, 2019, Mr. Holtzman had not been released to return to work and there was not an anticipated return to work date. The employer agreed to grant Mr. Holtzman a non-FMLA medical leave of absence through April 8, 2019. When Mr. Holtzman reached the end of the additional approved leave period without being released to

return to work and without an anticipated release date, the employer agreed to grant Mr. Holtzman a non-FMLA medical leave of absence through May 17, 2019. When Mr. Holtzman reached the end of the additional approved leave period without being released to return to work and without an anticipated release date, the employer advised Mr. Holtzman on May 20, 2019 that the employer could no longer hold his position open and was terminating the employment.

During the time when Mr. Holtzman continued on leave, his health condition worsened to include pain in his neck. Mr. Holtzman consulted with his primary care physician and a surgeon. Mr. Holtzman was diagnosed with bulging vertebral disks in his neck and back. The surgeon determined that Mr. Holtzman needed to undergo surgery on both areas of his spine, but that the second surgery would need to wait until a year or two after the first surgery. While Mr. Holtzman continued on leave status, he underwent surgery on his neck and was then referred to physical therapy. To date, Mr. Holtzman has not been released by a doctor to return to work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
> c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
> d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 Iowa Administrative Code rule 871-24.25.

Iowa Code § 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.

Iowa Administrative Code rule 817-24.26(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.

Iowa Admin. Code r. 871-24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The evidence in the record establishes a voluntary quit due to a non-work related medical condition. The separation from the employment, for unemployment insurance purposes, arguably occurred toward the end of November 2018, when Mr. Holtzman left the employment *indefinitely* due to a non-work related medical condition and left based on advice from a licensed and practicing medical professional. Mr. Holtzman has never since been released to return to the employment. Despite the indefiniteness of the absence from the start of the absence, Mr. Holtzman was eligible under the Family and Medical Leave Act for 12 weeks of job status protection and the employer was obligated to afford him that period of job status protection. The indefiniteness of Mr. Holtzman's absence from the employment continued past the February 21, 2019 exhaustion of the FMLA protection. The indefiniteness of Mr. Holtzman's absence from the employment continued past the April 8, 2019 end of the initial non-FMLA leave and beyond the May 17, 2019 end of the second non-FMLA leave. When the parties spoke on May 20, 2019, it continued to be clear to the parties that there was no reason to expect that Mr. Holtzman would be released to return to the employment at any point in the foreseeable future.

Whether one concludes that separation occurred in November 2018 or in May 2019, under the applicable unemployment insurance law, the separation was a voluntary quit due to a non-work related medical condition. Because the quit was without good cause attributable to the employer, Mr. Holtzman is disqualified for unemployment insurance benefits and the employer's account shall not be charged. Mr. Holtzman may requalify for benefits by one of two paths. Mr. Holtzman may requalify for benefits by working in and being paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Holtzman would be required to meet all other eligibility requirements. There is a second path to requalification that applies to voluntary quits due to non-work related medical conditions. Under that second path, Mr. Holtzman would need to (1) recover to the point where he is able to perform all of the duties of the previous employment, (2) have his recovery certified by a licensed and practicing physician, and (3) return to the employer with proof that he has been released to return to the employment and offer to perform services to the employer. If the employer does not at that point have suitable, comparable work available, Mr. Holtzman would become eligible for benefits provided he meets all other eligibility requirements. If Mr. Holtzman fulfills this second path to requalification, the separation would at that point become for good cause attributable to the employer and the employer's account would be subject to charge.

DECISION:

The June 3, 2019, reference 01, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer on or before May 20, 2019 due to a non-work related medical condition and upon the advice of a licensed and physician. The claimant is disqualified for unemployment insurance benefits and the employer's account shall not be charged. The claimant may requalify for benefits by one of two paths. The claimant may requalify for benefits by working in and being paid wages for insured work equal to 10 times his weekly unemployment insurance benefit amount. The claimant is required to meet all other eligibility requirements. The claimant may also requalify for benefits by (1) recovering to the point where he is able to perform all of the duties of the previous employment, (2) by having his

recovery certified by a licensed and practicing physician, and (3) by returning to the employer with proof that he has been released to return to the employment and offering to perform services to the employer. If then, the employer does not have suitable, comparable work available, the claimant would become eligible for benefits, provided he meets all other eligibility requirements. If the claimant fulfills this second path to requalification, the separation would at that point become for good cause attributable to the employer and the employer's account would become subject to charge.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been able to work and available for work within the meaning of the law since he established his original claim for benefits.

_____
James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/scn