

days for pneumonia. Mr. Tell then provided the employer with a doctor's note that indicated he needed to be off work and the employer approved a medical leave of absence. The duration of the leave of absence was extended eight times pursuant to doctor notes Mr. Tell provided to the employer. Pursuant to the final doctor's note dated March 14, Mr. Tell was to return to the employment on March 21, 2005. Mr. Tell did not return to the employment or request another extension of the leave of absence. On March 28, 2005, the employer concluded that Mr. Tell had voluntarily quit the employment and sent Mr. Tell appropriate separation materials. The employer recorded Mr. Tell's absences between March 21 and 28 as "no call, no shows."

Mr. Tell had worked for the employer for approximately 16 years and had been assigned to his final workstation on the "picnic" line during the last five to six years of the employment. The area of the plant in which Mr. Tell worked was cooled by blower fans to preserve the meat being processed. Mr. Tell's workstation was approximately 30 feet in front of one of the blower fans, which was mounted high on a wall behind Mr. Tell's workstation. Other employees were stationed closer to the blower fan, but were sufficiently beneath the stream of cool air to be less affected by it than was Mr. Tell. Mr. Tell wore several layers of clothing while he worked in the area. Though Mr. Tell had worked at the same station for several years, it was only during the last one and a half to two years of the employment that Mr. Tell found the cold air unbearable. Mr. Tell complained at times about the stream of cold air, at which time the employer would place a piece of cardboard on the blower to divert the air. The cleaning staff would remove the piece of cardboard after a day or two. Employees in the same general work area complained about the cold air blowing on them. The employer would respond to those complaints by increasing the flow of cold air through the fan closest to Mr. Tell and reducing the flow from other fans. At times when Mr. Tell was absent from the workplace, other employees would be assigned to Mr. Tell's workstation. Those employees would also complain about the cold air and a piece of cardboard would be placed on the blower fan to shield them from the cool air stream.

Mr. Tell was hospitalized for pneumonia in 2003 and attributed the illness to his working conditions. Mr. Tell's doctor recommended at that time that Mr. Tell find different employment. When Mr. Tell was hospitalized in January 2005 for pneumonia, he again attributed the illness to his working conditions. Mr. Tell's doctor did not specifically advise Mr. Tell that he needed to quit the employment, or that he needed to quit the employment to preserve his health. However, once Mr. Tell commenced the leave of absence, he felt too weak and too sick to return to the employment.

The employer had other departments that are not refrigerated. Mr. Tell could have transferred to one of those departments, but did not pursue a transfer. Mr. Tell believed that work on the kill floor would be too physically taxing and best left for younger employees. Mr. Tell believed that work in the "boxing" area was only for those who had no other skills. Mr. Tell believed he would have to take a pay cut if he transferred, but it does not appear that Mr. Tell explored the transfer option sufficiently to determine whether a transfer would, in fact, involve a cut in pay.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that Mr. Tell voluntarily quit the employment by failing to return to the employment after an approved leave of absence.

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.

If an 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. 871 IAC 24.22(j)(2).

The evidence in the record establishes that Mr. Tell did, in fact, fail to return to the employment at the end of the leave of absence. Accordingly, the separation from the employment is deemed a voluntary quit and Mr. Tell is disqualified for benefits unless the quit is found to be for good cause attributable to the employer.

Mr. Tell asserts a health-based reason for quitting the employment, specifically, that exposure to the cold was increasing his susceptibility to pneumonia.

871 IAC 24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury or pregnancy.

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 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.

Mr. Tell testified that his doctor had not advised him to quit the employment for health reasons. Mr. Tell has provided no medical evidence indicating a quit for health reasons was warranted. Mr. Tell had not placed the employer on notice that he would quit the employment if not provided with reasonable accommodations. Finally, Mr. Tell had not explored the reasonable accommodations that might have been available to him.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Tell's voluntary quit was without good cause attributable to the employer. Accordingly, Mr. Tell is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Tell.

DECISION:

The Agency representative's decision dated September 9, 2005, reference 01, is affirmed. The claimant voluntarily quit the employment by failing to return at the end of a leave of absence. The voluntary quit was without good cause attributable to the employer. 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, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant.

JT/s