**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**CYRUS L JOHNSON**
Claimant

**SCE PARTNERS LLC**
Employer

**APPEAL NO. 15A-UI-01493-JTT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 01/18/15**
**Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Cyrus Johnson filed a timely appeal from the February 2, 2015, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that the claimant had voluntarily quit without good cause attributable to the employer. After due notice was issued, a hearing was held on March 3, 2015. The claimant participated. Sarah Gillespie represented the employer and presented additional testimony through Rod Johnson.

**ISSUE:**

Whether the claimant's voluntary quit was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant Cyrus Johnson was employed by SCE Partners, L.L.C., d/b/a Hard Rock Hotel & Casino, as a full-time cook from July 2014 until January 15, 2015, when he voluntarily quit. The claimant had been hired as a part-time cook, but worked full-time hours almost since the start of the employment and was reclassified as a full-time employee shortly after he started in the employment. At the end of November, the claimant requested and received a $1.50 raise that took his hourly pay from $11.50 to $13.00. From mid-December 2014, Rod Johnson was Head Chef of the employer's World Tour Buffet, the area where the claimant worked. At about that same time, the claimant was named a Team Leader.

A couple days before the claimant quit in January 2015, he met with Chef Johnson and told him that he wanted to go to part-time status. The claimant essentially wanted to cut his work hours in half. While the claimant asserts that he made the request for health reasons, the employer asserts that the claimant told the employer that the full-time hours interfered with the claimant's V.A. benefits. The claimant asserts that the V.A. was okay with him working full-time and that it did not affect his benefits. The employer was aware that the claimant had chronic back issues. The claimant sometimes missed work due to back pain and provided doctor's excuses that referenced his back problems. The claimant did not request modification of his work duties based on his back problems, but did begin to delegate responsibility for heavy lifting to other

cooks. The employer was okay with that. When the claimant indicated he wanted to go from full-time to part-time status, Chef Johnson told the claimant that he could do that, but he would have to surrender his supervisory duties and take a $1.50 cut in pay. The employer was opposed to having a part-time supervisor. The employer asserts that the $1.50 pay raise issued at the end of November was based on the claimant assuming supervisory duties, though the Team Leader title came later.

The claimant found the employer's conditions for the change from full-time to part-time status unacceptable and quit on January 15, 2015. The employer continued to have full-time employment available for the claimant at the time of the separation. Neither the claimant's request for part-time status nor his decision to leave the employment was based on the advice of his physician. The claimant had discussed his employment with his doctor and the doctor had left those matters to the claimant's discretion. In connection with the request to go to part-time status, the claimant did not provide the employer with any medical documentation indicating that it was medically necessary for him to go to part-time status. The claimant underwent surgery on his back subsequent to quitting the employment.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.5-1-d 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. 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 that the claimant did indeed have chronic back issues and likely did reference these when he made his request to go part-time. However, the claimant did not provide the employer with medical documentation to establish that it was medically necessary for him to cut his work hours. The evidence fails to establish that it was medically necessary for the claimant to cut his work hours. The evidence indicates that the claimant had been able to modify his own work situation so that he was not performing heavy lifting and that the employer went along with that change. The evidence likewise fails to establish that it was medically necessary for the claimant to leave the employment. A doctor had not recommended that the claimant leave the employment. To the extent that maximizing V.A. benefits was a factor in the request to part-time or the decision to quit the employment, that would not create good cause attributable to the employer for cutting the work hours or for separating from the employment. What we are left with is an employee who requested a substantial change in the established conditions of the employment. The employer was not obligated to go along with such changes.

The claimant voluntarily quit the employment without good cause attributable to the employer. Accordingly, 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.

**DECISION:**

The February 2, 2015, reference 01, decision is affirmed. The claimant voluntarily quit the employment 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.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs