

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSEPH MUNGAI
Claimant

APPEAL 18A-UI-06967-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VA CENTRAL IA HEALTH CAR
Employer

OC: 05/27/18
Claimant: Appellant (1)

Iowa Code §96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 22, 2018, (reference 02) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2018. Claimant did not register for the hearing or request a postponement of the hearing. Claimant participated by written statement and Exhibits A through C, which were admitted into the record. Employer participated through human resources specialist Lindsey Hovde and assistant human resources officer Rebecca Bauman.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on December 10, 2013. Claimant last worked as a full-time social worker. Claimant was separated from employment on May 23, 2018, when he resigned.

Claimant has a medical condition that causes chronic back pain. It is a non-work related condition. During the last several months of his employment, claimant worked with employer's human resource department in requesting intermittent Family and Medical Leave Act (FMLA) leave for the condition. Initially, claimant submitted deficient paperwork in support of his request for leave. After working with the human resources department, claimant submitted an adequately complete request for FMLA leave on May 13, 2018. Employer's human resource department approved the request effective May 17, 2018. Before the human resource department was able to communicate the approval to claimant, he was scheduled for an investigatory interview due to unrelated performance deficiencies. On May 22, 2018, claimant was notified the interview would take place on May 23, 2018.

Claimant submitted a notice of resignation on May 22, 2018. Claimant cited his medical condition as a reason for resignation, but did not state a licensed or practicing physician recommended he resign.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is separated from employment without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25(35) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

In this case, claimant resigned due to a non-work related medical condition. Claimant did not establish he resigned upon the advice of a licensed or practicing physician or that he has returned to employer to offer his service upon full recovery and was denied employment. Therefore, claimant failed to establish he resigned for a good cause reason attributable to employer. Benefits must be denied.

DECISION:

The June 22, 2018, (reference 02) decision is affirmed. Claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/scn