IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

JESUS HECTOR CHAPARRO
Claimant

THE HILLSHIRE BRANDS COMPANY
Employer

APPEAL NO: 18A-UI-10439-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/16/18
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 15, 2018, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on November 14, 2018. The claimant participated in the hearing with CTS Language Link Interpreter Christian (10458) and was represented by Attorney Mary Hamilton. Martha Vielma, Human Resources Generalist and Timothy Steffen, Human Resources Manager, participated in the hearing on behalf of the employer. Claimant's Exhibits A and B were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left his employment for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for The Hillshire Brands Company (Tyson Foods) from August 5, 1998 to September 24, 2018. He voluntarily left his employment because he believed the employer was not following his work restrictions.

The claimant was struck by a co-worker's car in the employer's parking lot December 7, 2017, and sustained serious injuries. When he returned to work on light duty he was assigned to help the box maker stock boxes. On September 11, 2018, the workers' compensation physician released the claimant to work without restrictions and the employer removed the claimant from the box department. On September 14, 2018, the claimant returned to the employer with a note from his personal physician stating he could not lift more than 10 pounds (Claimant's Exhibit A). The employer asked for more specific restrictions and the claimant provided a note from his doctor stating he should "avoid pulling or pushing or lifting more than 10 pounds on an indefinite basis" (Claimant's Exhibit B).

The claimant was a day shift employee and his position before his injury was as a tank washer. He had not worked the production line during his employment with this employer. The employer

offered the claimant a variety of positions but the claimant did not accept those positions because he did not feel they met his restrictions. The employer first offered the claimant six night shift positions and when he did not accept those jobs, it offered him four day shift jobs but of those four only one, breast remover, would have fit the claimant's restrictions according to the employer. The claimant did not try the job because he did not believe it was a light duty position and he wanted to return to the box or labeling department.

The claimant was a no-call/no-show September 19, 20 and 21, 2018, as he did not believe the employer was complying with his restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons, the administrative law judge concludes the claimant voluntarily left his employment with good cause attributable to the employer.

Iowa Code § 96.5-1 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.

Iowa Admin. Code r. 871-24.26(1) 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:
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The claimant sustained a serious injury when he was struck by a co-worker's car in the employer's parking lot in December 2017. At that time, he was working as a tank washer on the day shift. After he was given restrictions and placed on light duty work by the workers' compensation physician, he worked in the box department. When the workers' compensation doctor released him without restrictions the employer offered the claimant various jobs he did not feel he could perform due to his physical condition. The claimant went to his personal physician and was given a new set of restrictions and the employer offered him several other positions, many on the night shift and all but one of the day shift positions did not meet his restrictions. While the claimant did not try the one day shift position the employer stated met his restrictions, he had observed that position long enough to form a reasonable belief that it did not meet his restrictions and he could not perform that job.

Inasmuch as the claimant would suffer a significant change in his contract of hire by being moved to a completely different position that may not have met his restrictions, the administrative law judge finds the claimant has met his burden of proof. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated October 15, 2018, reference 01, is reversed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/scn