

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LARRY BRUCE

Claimant

BROWNMILLER LEASING & TRANS INC

Employer

APPEAL 19R-UI-09576-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/22/19

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

Claimant filed an appeal from the October 14, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was scheduled for November 12, 2019. No hearing was held because claimant failed to respond to the notice and provide a telephone number at which he could be reached for the scheduled hearing. On November 13, 2019, a default decision was issued dismissing claimant's appeal.

On November 21, 2019, claimant appealed to the Employment Appeal Board (EAB). On December 3, 2019, the EAB remanded the matter to the Appeals Bureau for a hearing on the merits. Upon remand, due notice was issued and a hearing was held on January 6, 2020 at 9:00 a.m. Claimant participated with his non-attorney representative Ida Walker. Employer participated through Todd Brownmiller, President, and Keith Popp, Safety Director. No exhibits were admitted.

ISSUES:

Whether claimant's separation was a voluntary quit without good cause attributable to employer.
Whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time truck driver from August 2, 2017 until his employment with Brownmiller Leasing & Transportation, Inc. ended on July 19, 2019. (Popp Testimony) On July 11, 2019, claimant suffered a stroke, which was unrelated to his employment. (Popp Testimony; Claimant Testimony) On July 14, 2019, claimant's sister-in-law, Ida Walker notified employer of claimant's stroke and hospitalization. (Popp Testimony) On July 19, 2019, claimant and Walker notified employer that claimant was medically retiring as he was no longer able to drive a truck. (Popp Testimony) Employer and claimant had further contact to arrange the return employer's truck, payment of accrued vacation to claimant and payment of benefits to claimant per his disability policy. (Popp Testimony) Claimant has not been released to return to

work without restrictions. (Claimant Testimony) Claimant has not contacted employer and offered to return to work. (Popp Testimony) Claimant is not able to perform all of the duties of a truck driver. (Claimant Testimony) There was continuing work available to claimant. (Popp Testimony) Claimant's job was not in jeopardy. (Popp Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit his employment without good cause attributable to employer. Benefits are denied.

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

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.

Claimant voluntarily quit his job on July 19, 2019 when he notified employer that he was retiring from truck driving because he was no longer able to drive a tractor trailer truck. Claimant then made arrangements with employer to wind up his employment. Claimant's actions are both evidence of his intention to sever the employment relationship and an overt act of carrying out his intention. Claimant voluntarily quit his employment due to a non-work related illness or injury. Claimant has not obtained a release to return to work as a truck driver, has not returned to employer and offered his services upon recovery, and has not fully recovered so he can perform all of the duties of the job. Therefore, claimant has not met all of the criteria for the exception to disqualification set forth in Iowa Code section 95.5(1)d. Claimant has not met his burden of proving he voluntarily quit his employment for good cause attributable to employer. Benefits are denied. Because claimant is disqualified due to separation, the issues of claimant's ability to work and availability for work are moot.

DECISION:

The October 14, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit without good cause attributable to employer. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issues of ability to and availability for work are moot.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

acw/scn