

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS W SCHULTZ
Claimant

APPEAL NO. 10A-UI-15799-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNESHIEK MEDICAL CENTER
Employer

OC: 10/10/10
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated November 8, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 29, 2010. The claimant participated. The employer participated by Maxine Klotzbach, human resources representative. The claimant's wife, Charlynn Schultz, was present. The record consists of the testimony of Thomas Schultz; the testimony of Maxine Klotzbach; and Claimant's Exhibits A through D.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a hospital, clinic, and home health care center. The claimant was hired on May 13, 2004, as a full-time maintenance worker. On or about February 13, 2010, the claimant fell on the ice outside his home. He injured his right knee and required a full knee replacement. The claimant reported the injury to his employer. He was required to use his PTO hours and then was given 480 hours of Family Medical Leave Act (FMLA) leave. When the claimant's FMLA leave expired on May 10, 2010, the employer gave the claimant an additional 30 days of leave. The claimant was still not able to return to work.

On June 10, 2010, the claimant was sent a letter informing him that due to his inability to return to work and the exhaustion of all of his leave, he was being terminated. His last day of employment was June 11, 2010. (Exhibit A) The claimant did not quit his job.

The claimant was not released to return to work until October 4, 2010. At that time, he was given a full release by his physician. The claimant is actively seeking work. He is 51 years old and has

completed high school. He has experience as a production worker and maintenance worker. The claimant can physically perform all of the jobs he has done in the past.

REASONING AND CONCLUSIONS OF LAW:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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 is uncontroverted that it was the employer who initiated the separation of employment in this case. The claimant had an extended period of disability due to a non-work-related injury. He exhausted all of his FMLA leave and medical leave and was unable to return to work. The employer ended the claimant's employment as of June 11, 2010, due to the claimant's inability to return to work. There is no evidence that the claimant ever quit his job. The employer may have had good business reasons for ending the claimant's employment. Under these circumstances, however, the claimant is not deemed a voluntary quit. He was also not discharged for misconduct but, rather, his inability to return to work. Benefits are allowed if the claimant is otherwise eligible.

The claimant established his claim for benefits on October 10, 2010. The claimant was released to full duty as of October 4, 2010. He has been actively seeking employment. The claimant is therefore considered able and available for work as of October 10, 2010.

DECISION:

The representative's decision dated November 8, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw