

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICK G HANTZEAS
Claimant

SIEMENS WIND POWER INC
Employer

APPEAL 21A-UI-07947-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Nick Hantzeas (claimant) appealed an Iowa Workforce Development March 17, 2021, decision (reference 03) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the Siemens Wind Power (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 28, 2021. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from April 2019, to September 27, 2019, as a full-time wind blade technician. The employer hired him to work forty hours per week with overtime, when assigned. The employer had contracts to fill and overtime started in June or July of 2019. The employer assigned the claimant to work twelve-hour days, seven days per week.

The claimant's mother was diagnosed with cancer and he had to care for her. He developed back spasms from a degenerative disc. His doctor did not restrict him from working. In mid-September 2019, the claimant asked the employer for additional time off. The employer told the claimant he had taken all the time available. On September 13, 2019, the claimant told the employer he was quitting as of September 27, 2019, due to his back spasms and caring for his mother. September 27, 2019, was his last day of work. Continued work was available with the employer had the claimant not resigned.

The claimant continues to care for his mother and have medical issues related to his back. He believes he may be able to work a part-time sedentary job. The claimant does not believe he is able to return to work with the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)c and d provide:

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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

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 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). The claimant's intention to voluntarily leave work was evidenced by the claimant's actions. The claimant told the employer he was leaving due to medical issues and to care for his mother. He stopped appearing for work.

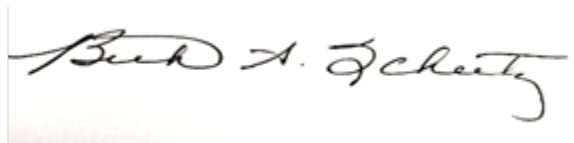
A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to his back spasms but it was not under the advice of his physician. The employer consented to his leaving. The claimant has failed to provide the employer with certification that he has recovered. In addition, the claimant has failed to offer his services to the employer.

The claimant also left work to take care of his mother who is ill. The claimant's mother has not sufficiently recovered. The claimant has not returned to and offered services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's March 17, 2021, decision (reference 03) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

June 11, 2021
Decision Dated and Mailed

bas/kmj