

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

WILLIAM E TELLIS
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO. 22A-UI-16286-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/08/21
Claimant: Appellant (1R)**

Iowa Code Section 96.5(1)(d) – Voluntary Quit

STATEMENT OF THE CASE:

On August 19, 2022, William Tellis (claimant) filed a timely appeal from the August 16, 2022 (reference 01) decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on June 9, 2022 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 15, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

William Tellis (claimant) was employed by Tyson Fresh Meats, Inc. as a full-time meat production line worker. The claimant began the employment in April 2022 and last performed work for the employer in May 2022. The claimant's work hours were 7:00 a.m. to 5:30 p.m., Monday through Saturday.

The employment came to an end in the context of the claimant having carpal tunnel syndrome that caused him significant pain when performing work for the employer and that rendered him unable to perform work for the employer. Though the claimant asserts his symptoms began after he began the employment, a reasonable person would conclude the claimant's carpal issues predated the brief employment and were not caused by the brief employment. Toward the end of the employment, in response to the claimant indicating he was in pain while performing work for the employer, the employer asked the claimant to obtain a statement of his medical restrictions from his physician. The claimant has not provided medical documentation for the appeal hearing, but asserts the medical restrictions document he provided to the employer stated he was not to lift more than 20 pounds, restricted him from repetitive

movement, and included “a bunch of restrictions.” The claimant advises he provided the medical restrictions document to the employer on May 27, 2022. The claimant concedes that the medical restrictions prevented the claimant from being able to perform work for the employer. In response to the medical restrictions document, the employer advised the claimant the employer would not have additional work for the claimant unless and until the claimant’s medical restrictions were lifted. The claimant’s carpal tunnel issues did not give rise to a worker’s compensation claim. The claimant characterizes his carpal tunnel issues as severe and advises that he underwent surgery on his left hand subsequent to this separation from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of labor-saving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 Iowa Administrative Code rule 871-24.25.

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 Administrative Code rule 817-24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The weight of the evidence establishes a "voluntary quit" without good cause attributable to the employer, based on a non-work related illness. The claimant's assertion that this brief employment caused his "severe carpal tunnel" syndrome is simply not credible. The claimant provided no medical documentation evidence, including no evidence to establish that this employment caused or aggravated the claimant's underlying serious health condition. The claimant's assertion to the employer that he was experiencing pain while performing work for the employer prompted the employer to reasonably request a statement of the claimant's medical restrictions. On or about May 27, 2022, the claimant presented the employer with a medical restrictions document that essentially stated the claimant could not perform any aspect of his regular duties, with or without reasonable accommodations. In other words, the claimant's presentation of the medical restrictions document was the overt act that effectively ended the employment. Based on the medical restrictions document indicating the claimant could not perform work for the employer, the employer reasonably responded there was no work available unless and until the claimant's medical restrictions were lifted. The claimant, not the employer, initiated the separation.

The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. Because the medical restrictions document the claimant provided to the employer was essentially advice from a physician that the claimant leave the employment, the claimant may also requalify for benefits by following the course of action set forth in Iowa Code section 96.5(1)(d) and Iowa Administrative Code rule 817-24.26(6)(a). The claimant would need to recover from his illness, meaning the claimant would need to become able to perform all of

the duties of the previous employment. The claimant's recovery would need to be certified by a licensed and practicing physician. The claimant would need to return to the employer and offer his services. If at that time, no suitable, comparable work was available, the claimant would requalify for benefits and the employer would become subject to charge for benefits. The claimant meet all other eligibility requirements.

DECISION:

The August 16, 2022 (reference 01) decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer due to a non-work related illness. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The employer's account will not be charged, subject to the following caveat. Because the claimant left the employment due to a non-work related illness, and because the separation was on the advice from a physician, the claimant may also requalify for benefits by (1) recovering from his illness so that he able to perform all of the duties of the previous employment, (2) have his recovery certified by a licensed and practicing physician, and (3) return to the employer and offer his services. If at that time, no suitable, comparable work is available, the claimant would requalify for benefits and the employer would become subject to charge for benefits. The claimant meet all other eligibility requirements.

The administrative law judge notes the claimant has not made weekly claims since establishing the additional claim for benefits that was effective May 22, 2022. The claimant cannot be considered for benefits for weeks for which he did not file a weekly claim. See Iowa Administrative Code rule 871-24.2.(1)(g). Based on the absence of weekly claims, the matter will not be remanded to address the able and available eligibility requirements. If and when the claimant reactivates the claim and commences making weekly claims, the claimant's ability to work and availability for work will need to be examined at that time.



James E. Timberland
Administrative Law Judge

October 7, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.