

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAVIS D MERKES
Claimant

FUELINER LLC
Employer

APPEAL 18A-UI-11502-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/04/18
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 21, 2018, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on December 13, 2018. Claimant participated and testified. Employer participated through Human Resource Manager Mike DeMouilly. Claimant's Exhibit A and employer's Exhibits 1 through 10 were received into evidence.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 1, 2015. Claimant last worked as a full-time transport driver. Claimant was separated from employment on November 2, 2018, when he voluntarily quit.

On October 31, 2018, claimant suffered a work related injury and was given a ten pound lifting restriction. (Exhibit 8). Claimant testified his doctor also told him he needed to avoid any sudden motions with his arms, though this was not written on his work release. When claimant returned to work he was placed on light duty. He was given the task of taking papers out of envelopes and placing them into piles. Claimant testified this work aggravated his injury and he felt it violated his doctor's advice to avoid sudden motions with his arms, though he could not specifically identify a sudden motion this task required. Claimant was told he would be doing sweeping the next day. He felt this also violated his doctor's advice to avoid sudden motion. On November 2, 2018, claimant notified the safety manager, Bill Skinner, that he was resigning because he felt the employer was assigning him to do work that aggravated his injury. Claimant did not talk to his doctor about having his restrictions modified in any way and was not advised by his doctor that he could not work or had to resign his position. Claimant could not identify any work he felt he would have been able to do or any additional accommodations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code section 96.5(1)d 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. 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 Admin. Code r. 871-24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

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 court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Here, claimant suffered a work-related injury and was given work restrictions. The employer was willing to accommodate claimant's restriction and gave him light duty. The claimant argues the light duty continued to aggravate his injury and violated his doctor's advice. However, it is difficult to imagine how removing papers from an envelope and putting them into a pile would either require claimant to lift more than ten pounds or engage in sudden movements with his arms. Claimant did not offer any other suggestions of reasonable accommodations. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The November 21, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs