

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STEVEN A CLARK

Claimant

APPEAL NO. 20A-UI-04150-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID-PLAINS INSULATIONS CO INC

Employer

OC: 05/12/19

Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Steve Clark filed a timely appeal from the May 4, 2020, reference 02, 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 that Mr. Clark voluntarily quit on April 3, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 2, 2020. Mr. Clark participated and presented additional testimony through Rick Burford and Johnathan Pauly. Steve Beresh represented the employer. Exhibits A and B were received into evidence.

ISSUE:

Whether Mr. Clark's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Steven Clark was employed by Mid-Plains Insulations Company, Inc. as a full-time insulator from May 2019 until April 3, 2020, when he voluntarily quit. Throughout the employment, Mr. Clark was assigned to a large construction project in Council Bluffs. Dave Owen, Jobsite Foreman/Supervisor was Mr. Clark's supervisor. Dave Ladd, Sub-Foreman, also exercised supervisor authority over Mr. Clark. The employer is a mechanical insulating contractor. Mr. Clark's duties involved insulating pipes. The employer had about 50 insulators assigned to the Council Bluffs project. About 2,000 laborers representing various trades worked at the Council Bluffs jobsite. Mr. Clark was diagnosed with chronic obstructive pulmonary diseases (COPD) about eight years ago. From the start of the employment, the employer provided Mr. Clark with N-95 dust masks to wear while performing his insulator duties. The employer also provided Mr. Clark with gloves that protected his hands from being cut while Mr. Clark handled insulation materials. The employer issued the same personal protective equipment to all other employees.

On March 30, 2020, Mr. Clark notified Mr. Ladd that he was giving his two-week notice that he was going to quit. Mr. Ladd notified Mr. Owen. Mr. Clark told the employer that he was quitting because of his COPD and because of COVID-19. Mr. Clark's doctor had identified Mr. Clark as being at high-risk if he contracted COVID-19 and had advised Mr. Clark to wear a protective

mask. Mr. Clark's doctor had not advised him to quit the employment or to self-quarantine. Mr. Clark did not provide the employer with any medical documentation indicating a need for workplace accommodations or indicating a need for Mr. Clark to leave the employment due to COVID-19, COPD or any other health concern. After Mr. Clark gave his two-week notice, he elected to terminate the employment prior to the end of the two weeks and elected to be done as of Friday, April 3, 2020. The employer continued to have work for Mr. Clark at the time Mr. Clark voluntarily separated from the employment.

Mr. Clark and some other insulators were upset with Mr. Owen for not being more proactive in the face of the expanding COVID-19 pandemic. The employer and the jobsite general contractor took steps to implement sanitation and "social distancing" steps recommended by the Centers for Disease Control (CDC). They provided handwashing stations and hand sanitizer. However, at the time Mr. Clark left the employment, the employer was still having two workers work from the same lift basket, where they could not be six feet apart. In addition, Mr. Clark and others were concerned about an insufficient number of handwashing stations, the need to share portable toilets with a large number of laborers, the catered meals, and the layout of the designated eating area. The begrudged the employer for not laying them off. While Mr. Clark continued in the employment, there were no confirmed cases of COVID-19 identified at jobsite.

Mr. Clark has provided a note from his doctor that is dated May 11, 2020, some five weeks after he separated from the employment. The note indicates as follows:

Steve A. Clark ... was evaluated by the Siouxland Medical Education Foundation on 05/11/2020. He he [sic] has a prior diagnosis of restrictive airway disease/COPD. This does place him at high risk for more severe respiratory illness.

Work restrictions/accommodations should include limiting contact (stay 6 feet away from others) and limiting potential of dispersal of respiratory secretions by wearing a covering for their nose and mouth whenever they are in settings where other persons are present.

REASONING AND CONCLUSIONS OF LAW:

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.

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 weight of the evidence in the record establishes a voluntary quit for no disqualifying reason. Mr. Clark did indeed have a chronic health condition that placed him at increased risk if he contracted COVID-19. Mr. Clark's history of COPD begs the question of why he would accept a job dealing with insulation materials. However, one of the positives associated with the employment was the ongoing availability and daily use of N-95 masks as personal protective equipment. While Mr. Clark and some others may have been displeased with the pace of the employer's implementation of social distancing protocol, the employer was taking reasonable steps, and was reasonably amending those steps, as more disease control information became available. The weight of the evidence fails to establish that it was medically necessary for Mr. Clark to leave the employment to avoid serious danger to his health. Mr. Clark's decision to leave the employment was not based on advice of a licensed and practicing physician. Mr. Clark did not present the employer with any medical documentation indicating a need for reasonable accommodations in the workplace. Mr. Clark is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Clark must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The May 4, 2020, reference 02, decision is affirmed. The claimant voluntarily quit the employment on April 3, 2020 without good cause attributable to the employer. 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. The employer's account shall not be charged.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



James E. Timberland
Administrative Law Judge

June 30, 2020
Decision Dated and Mailed

jet/scn