

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DESIRAE WILLIS
Claimant

APPEAL NO. 17A-UI-09888-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNEBAGO INDUSTRIES
Employer

OC: 12/25/16
Claimant: Appellant (2)

Iowa Code Section 96.5(1)(d) – Voluntary Quit Based on Medical Condition

STATEMENT OF THE CASE:

Desirae Willis filed a timely appeal from the September 22, 2017, reference 02, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Willis had voluntarily quit on June 13, 2017 without good cause attributable to the employer by being absent three consecutive days without notice to the employer. After due notice was issued, a hearing was held on October 12, 2017. Ms. Willis participated personally and was represented by attorney James Fitzsimmons. Susan Gardner represented the employer and presented additional testimony through Dee Pearce. Exhibits A through F were received into evidence.

ISSUE:

Whether Ms. Willis separated from the employer for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Desirae Willis was employed by Winnebago Industries as a full-time line production assembler. Ms. Willis commenced the employment in September 2016 and last performed work for the employer on Wednesday, June 7, 2017. Ms. Willis' immediate supervisor was Production Supervisor Mike Christ. Ms. Willis' work hours were 6:00 a.m. to 3:30 p.m., Monday through Friday, with weekend overtime work as needed. The workplace is in Forest City. Ms. Willis resides in Mason City. Ms. Willis commuted to and from work on a bus.

Ms. Willis has cognitive limitations that factored in her interactions with the employer, her separation from the employer, and that factored in her participation in the unemployment insurance appeal hearing. Ms. Willis has been diagnosed with at least one attention deficit disorder. Ms. Willis has a limited ability to comprehend. Ms. Willis graduated from high school. Her high school coursework consisted mostly of special education programming. Despite these struggles, Ms. Willis was able to satisfactorily perform her production assembler duties at Winnebago Industries. The employment ended when Ms. Willis ran afoul of the employer's absence reporting requirements.

In mid-April 2017, Ms. Willis slipped and hit her right knee on the step of a recreational vehicle at Winnebago Industries. Ms. Willis was performing work on the recreational vehicle at the time. Ms. Willis did not give the matter additional thought at the time. Ms. Willis continued working, but developed pain in her knee over time following the injury incident. On May 7, 2017, the pain in Ms. Willis' knee prompted Ms. Willis to go to the Emergency Room at Mercy Medical Center in Mason City. The medical provider diagnosed Ms. Willis with muscular skeletal pain, ruled out a blood clot, and sent Ms. Willis home with instructions to return for further testing if the pain persisted. On May 8, 2017, Ms. Willis returned to work without restrictions. When Ms. Willis returned to work on May 8, she told Mr. Christ about her trip to the Emergency Room and showed him the medical discharge paperwork she received before leaving the Emergency Room.

On May 10, 2017, Ms. Willis was assigned to work in "the pit." The work required that Ms. Willis get down on the ground and then pull herself back up. During her lunch break, Ms. Willis' right leg and her back "seized up" and Ms. Willis was unable to rise from a seated position. Mr. Christ summoned security personnel and had them transport Ms. Willis to an Emergency Room in Britt. Mr. Christ asked Ms. Willis what might have caused the problem. At that time, Ms. Willis told Mr. Christ about hitting her knee in April. At the Emergency Room in Britt, Ms. Willis was diagnosed with a herniated vertebral disc, pinched sciatic nerves and acute pain in her leg and knee. The medical provider took Ms. Willis off work for a week and instructed her to follow up with her primary care physician for reevaluation before she returned to work.

On Friday, May 19, 2017, Ms. Willis was evaluated by Dr. Benson Hargens, M.D., at Mason City Mercy Family Medicine Residency. Dr. Hargens' notes concerning the appointment included the following:

HISTORY OF PRESENT ILLNESS:

1. Acute Knee Pain:

Patient is a 37yo morbidly obese female with an unremarkable past medical history who presents today with right knee pain. Patient states that one year ago she was working at her job in a factory when a 600 pound frame fell on her, striking her back. Following this injury she had no persistent pain or signs of low back or extremity injury. She continued to work with no restrictions. Then approximately 4-6 weeks ago, she was going up a step at work when she slipped and struck her right knee. Again, she did not note significant pain following the injury and continued to work as normal.

However, over the next several days she started to note pain on the anterior and lateral aspect of her right knee. She was evaluated in the emergency room on two separate occasions and plain radiographs of the right knee and a lower extremity venous Doppler were negative for any abnormality. Patient was told she had musculoskeletal pain and has been taking Ibuprofen and Norco since with little pain relief.

Today, she continues to experience pain with flexion and extension of her knee. She also experiences pain at rest. Patient denies any loss of sensation or decreased strength in her right lower extremity. She also denies any calf redness/tenderness/swelling bilaterally.

In his assessment notes, Dr. Hargens includes the following:

Given the patients' symptoms, body habitus, and line of work I am suspicious patient has knee osteoarthritis exacerbated by her work. Further evaluation with MRI seems appropriate to evaluate for other acute causes of knee pathology. It also seems appropriate to initiate physical therapy for further strengthening and improved stability of right knee.

Dr. Hargens order an MRI and referred Ms. Willis for physical therapy. Dr. Hargens encouraged Ms. Willis to lose weight, provided her with a note to give to the employer, and directed to return for a follow up appointment in four to six weeks.

The note that Dr. Hargens provided to Ms. Willis stated as follows: "Desirae Willis is currently under my medical care for acute knee pain. Please do not let patient do any work on her knees. All other tasks are fine at this time." Under the belief that her condition was work related, Ms. Willis asked Dr. Hargens to send a copy of medical notes to Winnebago Industries.

Ms. Willis returned to work on Monday, May 22, 2017. On that day, Ms. Willis took a copy of the May 19 medical note to the Winnebago Industries human resources office and provided it to Dee Pearce, Human Resources Supervisor. Ms. Pearce made a copy of the note. Ms. Pearce communicated with Mr. Christ to ensure the Winnebago Industries accommodated the restriction again having Ms. Willis perform work on knees.

During the week of May 22-26, Ms. Willis continued to experience knee pain. On Friday, May 26, Ms. Willis missed the morning bus from Mason City to Forest City. Ms. Willis' fiancé's parents transported her from Mason City to the workplace in Forest City. During the drive, Ms. Willis experienced pain in her leg and was unable to move her leg. Ms. Willis' fiancé's parents escorted Ms. Willis to the security office at Winnebago Industries. The security personnel provided Ms. Willis with crutches and summoned Darcy Lackore, Personnel Coordinator. Ms. Willis told Ms. Lackore that her knee pain had worsened, that she could not move her leg and that she was in the process of setting up a medical appointment to be reevaluated. Ms. Lackore approved Ms. Willis' departure from the workplace and asked her to have the doctor's office fax a note to the employer. Ms. Willis made certain Mr. Christ was aware of her absence before she left. Ms. Willis' fiancé's parents transported Ms. Willis from the workplace to Forest City.

On May 26, 2017, Ms. Willis was evaluated by Dr. Christopher Morse, D.O., of Mason City Mercy Family Medicine Residency. At that point Ms. Willis' knee was considerably swollen and without normal movement. Dr. Morse provided Ms. Willis with a medical note that stated as follows:

Desirae Willis is currently under my medical care and may return to work at this time with the following restrictions: No lifting more than 40 pounds, No deep squats, No prolonged walking/standing (for more than 1 hour at a time), No climbing ladders or narrow stairs. Please excuse Desirae from duties that include these activities. These restrictions are to stay in force for 3 weeks from today's date. If you require additional information please contact our office.

Ms. Willis returned to work on Tuesday, May 30, 2017, following the Memorial Day holiday. Ms. Willis took the May 26, 2017 medical note to the Winnebago Industries human resources office and provided it to Ms. Lackore. Ms. Lackore contacted Mr. Christ to ensure that the new restrictions were followed in the workplace.

During the contact on May 30, Ms. Lackore provided Ms. Willis with a Winnebago Industries Weekly Disability Income Claim Form. The original document was on green paper. Ms. Lackore had provided Ms. Willis with a similar document in connection with prior medical-based absences. On May 30, Ms. Lackore signed and dated the form before she provided it to Ms. Willis. Ms. Lackore had entered Ms. Willis' name, employee ID number, department number, start date, May 25 last date worked before the May 26 absence and May 30 return to work date. The form included a place for Ms. Willis to sign authorizing her doctor to release medical information to the employer so that the employer could determine her eligibility for disability benefits/income. The bottom half of the form contained the heading CONFIDENTIAL

Attending Physician's Statement. Under that heading, the form provided a place for the physician to enter a diagnosis, the date the disability began, the date the disability result in absence, and placed the physician to indicate whether the absence involved illness, injury, hospitalization, outpatient surgery, and whether the disability had ended. At the bottom of the form there was a place for the physician to sign and date the form. The physician statement portion of the form included the following:

ATTENTION PROVIDER – PLEASE NOTE

This form is intended for pay purposes only and WILL NOT be accepted to authorize or excuse an employee from work nor release an employee to return to work. It is the employee's responsibility to secure written documentation clearly indicating the date(s) which the employee is to be excused from work and released to return to work, with or without restrictions. Facsimiles (faxes) are accepted, but employees are responsible to follow up with the Winnebago Industries Health Services to ensure receipt.

When Ms. Lackore gave Ms. Willis the form on May 30, Ms. Lackore told Ms. Willis to take it to the doctor and have the doctor fill it out and fax it Winnebago Industries so that the employer had a record of Ms. Willis being absent from work to go to the doctor and could treat the absence as an excused absence so that the absence would not be counted against Ms. Willis.

As Ms. Willis continued to work, she continued to experience knee pain despite the work restrictions that Dr. Morris had put in place. On Wednesday, June 7, 2017, Ms. Willis left work early with permission so that she could return to the doctor for further evaluation. On that day, Ms. Willis was evaluated by Dr. Hargens. Dr. Hargens determined that Ms. Willis needed to go off work entirely until she could complete physical therapy. Dr. Hargens provided Ms. Willis with a medical note that stated as follows:

To Whom It May Concern:

Desirae Willis is currently unable to work due to injury.

This is effective starting June 7, 2017.

The date she can return to work depends on her course of therapy. A specific date will be determined at a later date.

If you require additional information please contact our office.

When Ms. Willis went to her medical appointment on June 7, she took with her the Weekly Disability Income Claim Form that Ms. Lackore had provided to her on May 30. At the time of the medical appointment, Ms. Willis signed and dated the medical information release authorization portion of the form. Dr. Hargens completed the Attending Physician's Statement. Dr. Hargens included a diagnosis of "Acute Pain of Right Knee." Dr. Hargens indicated that the disability began on May 19, 2017, was due to injury, and resulted in absence *beginning "6/7/2017."* In other words, Dr. Hargens missed the information on the form that indicated the form was an absence that fell between May 25 and 30 and missed the small-print warning at the bottom of the form that indicated the employer would not accept the information on form as a medical note excusing absence. Ms. Willis left the medical appointment with the understanding that Dr. Hargens' office would fax both documents to the employer.

At 5:13 a.m. on August 8, 2017, Ms. Willis properly notified the employer that she would be absent due to her knee. At 8:45 a.m. on August 8, 2017, Dr. Hargens' staff faxed materials to the Winnebago Industries human resources office. Those materials included the Weekly Disability Income Claim Form. According to Dr. Hargens' office, the materials the medical office faxed to the employer on August 8, 2017 also included the June 7, 2017 medical note that took Ms. Willis off work indefinitely until she could complete physical therapy. The employer acknowledges receipt of the Weekly Disability Income Claim Form, but asserts it did not receive

that additional medical note on June 8. Ms. Willis did not contact Winnebago Industries on or about June 8 to confirm receipt of either document.

The employer has an employee handbook that the employer provided to Ms. Willis at the start of her employment. The handbook includes an attendance policy and a leave of absence policy. The attendance policy obligated Ms. Willis to call the designated absence reporting line each day she was absent and to make that contact within the first hour of scheduled start of her shift or earlier. The attendance policy indicated that the employer would deem an absence of three days without proper notice to be a voluntary quit. Ms. Willis understood the absence reporting requirement and the three-day, no-call/no-show policy. The leave of absence policy obligated Ms. Willis to make the daily calls to report her absences until the employer had received medical documentation taking her off work. The leave of absence policy stated that Ms. Willis was responsible for making certain the employer received the documentation. It was Ms. Willis' failure to comply with this last element that prompted the employer to conclude that Ms. Willis had voluntarily quit the employment. Ms. Willis' disability-based comprehension issues were a factor in her failure to comply. When Ms. Willis was absent on June 9, 12 and 13 without calling the absence reporting line, Mr. Christ decided that Ms. Willis had voluntarily quit the employment under the employer's three-day, no-call/no-show policy. The employer only considered those three absences when deciding to consider the employment terminated.

When Ms. Willis learned from a coworker that the employer deemed her employment terminated, she contacted the employer on the morning of June 14, 2017 and spoke with Dee Pearce, Human Resources Supervisor. Ms. Willis also contacted Dr. Hargens' office and had the medical office fax both of the June 7 medical documents to the employer with a cover sheet indicating that both had been faxed to the employer on June 8. The employer confirms receipt of the materials on June 14, 2017. The employer did not alter Mr. Christ's determination that the employment was done.

After the separation from the employment, Ms. Willis completed the course of physical therapy ordered by her doctor. Effective July 14, 2017, Dr. Hargens released Ms. Willis to return to work without restrictions and provided her with a medical note indicating as much. By this time, Ms. Willis had consulted with an attorney in reference a worker's compensation claim. Ms. Willis had the July 14, 2017 medical release document faxed to the employer on that day. The employer routed the document to personnel responsible for worker's compensation matters. Ms. Willis then completed an application for employment at Winnebago Industries. Because Ms. Willis lives in Mason City and does not drive, she had a friend who works for Winnebago Industries take her application to the hiring personnel. Ms. Willis' friend called Ms. Willis immediately after dropping off the application to confirm delivery of the application and the employer's receipt of the application. Ms. Willis then waited a month to a month and a half for a response from the employer, but did not receive a response. Ms. Willis then called and left a message for the hiring staff, but did not receive a response.

Ms. Willis established an original claim for unemployment insurance benefits that was effective December 25, 2017. Subsequent to her separation from Winnebago Industries, Ms. Willis established an additional claim for benefits that was deemed effective September 3, 2017.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b).

Workforce Development rule 871 IAC 24.1(113) provides, in relevant part, as follows:

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

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.

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.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The word *presumed* is an especially important word in the above-referenced administrative rule. The presumption that a three-day absence without notice indicates a voluntary quit *without good cause* attributable to the employer is a presumption that can be rebutted. The employer concedes that Ms. Willis provided appropriate notice of her need to be absent through June 8, 2017. Ms. Willis' absences on June 9, 12, and 13, occurred in the context of Ms. Willis' belief that she had provided proper notice of her need to be absent during those days. Ms. Willis reasonably believed that her doctor was going to fax medical documentation to the employer that supported her need to be off for the days in question. The employer's leave policy relieved Ms. Willis of the obligation to make the daily absence call once the employer had received supporting medical documentation. The weight of the evidence establishes that the employer did in fact receive supporting documentation on the morning of June 8, 2017. The employer concedes receipt of the Weekly Disability Income Claim Form. At the time the doctor's office resubmitted that form on June 14, the medical provider asserted in the submission that *both* medical documents had previously been transmitted to the employer on the morning on June 8. The one document the employer acknowledges receiving on the morning of June 8 indicated that Ms. Willis needed to be off work effective June 7, 2017. If the highly-educated medical professional did not catch the employer's boilerplate language on that information on the form would not be accepted as a medical excuse or release, it is unreasonable to expect Ms. Willis, with her diminished comprehension skills, to catch it. The mere fact that Ms. Willis did not call the employer on June 9, 12 and 13 does not in this instance establish a voluntary quit *without good cause* attributable to the employer.

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.

The weight of the evidence establishes a separation that was for good cause attributable to the employer. The weight of the evidence establishes that Ms. Willis had notified the employer of her need to leave the employment, at least temporarily, due to her injury. Whether the employer deemed the notice acceptable is not dispositive in the context of Iowa Code section 96.5(1)(d). The notice was reasonable and reliable. Ms. Willis' doctor took her off work indefinitely, or at least until she could complete the course of physical therapy. Ms. Willis participated in the physical therapy, was released to return to work effective July 14, 2017, faxed the release to the employer, and applied for work on July 19, 2017. The employer did not make work available for her at that time. Ms. Willis is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The September 22, 2017, reference 02, decision is reversed. The claimant separated from the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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