

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

HAROLD J WILLIS
Claimant

APPEAL NO. 18A-UI-05899-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 04/29/18
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Harold Willis filed a timely appeal from the May 18, 2018, reference 01, decision that disqualified him for unemployment insurance benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Willis voluntarily quit on May 3, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 14, 2018. Mr. Willis participated. Stephanie Staack represented the employer and presented additional testimony through Cory Theis. The hearing in this matter was consolidated with the hearing in Appeal Number 18A-UI-05900-JTT. The administrative law judge took official notice of the Agency's administrative record of Mr. Willis' weekly claim for the week that ended May 5, 2018.

ISSUE:

Whether Mr. Willis' 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: Harold Willis was employed by Target Corporation as a full-time warehouse worker/picker from April 4, 2018 until May 3, 2018, when he voluntarily quit. Mr. Willis' primary work duties involved moving boxes from one pallet to another pallet in preparation for shipping merchandise to the employer's retail stores. Mr. Willis' work hours were 6:00 a.m. to 2:00 p.m. Friday through Monday. Operations Managers Cale Anderson, Luke Schoonober and Callie Hervas were Mr. Willis immediate supervisors.

Mr. Willis quit the employment after concluding that the work was too physically taxing. Mr. Willis is 48 years old. Mr. Willis had not performed warehouse work prior to accepting the Target employment. Prior to accepting the employment, the employer described the work duties and provided Mr. Willis with a tour so that he could gain a better understanding of the work duties. Mr. Willis would receive two breaks during this shift. At 8:40 a.m., Mr. Willis would receive a 15-minute break. At 11:25 a.m., Mr. Willis would receive a 20-minute break.

On April 13, Mr. Willis began to experience pain and swelling in his right forearm while he was performing his work duties of moving boxes from one pallet to another. Mr. Willis is right-handed. Mr. Willis also observed that he diminished grip with his right hand. On April 14, Mr. Willis reported his arm pain to Mr. Anderson and Mr. Anderson had Mr. Willis see the company nurse. The company nurse treated Mr. Willis' forearm condition by putting ice on it. On April 21, Mr. Willis had his doctor examine his arm. The doctor diagnosed tendonitis. Mr. Willis' doctor took Mr. Willis off work for a couple days and released Mr. Willis to return to work on April 23 with medical restrictions. Mr. Willis doctor restricted Mr. Willis from gripping with his right thumb and restricted Mr. Willis to wearing a wrist and forearm brace/splint until the doctor could further evaluate Mr. Willis. Mr. Willis returned to work on April 23 and provided the medical excuse to the company nurse. The company nurse told Mr. Willis that the employer could not hone the medical restrictions imposed by Mr. Willis' doctor and indicated that Mr. Willis would need to be evaluated by the employer's designated doctor. The company nurse contacted the employer's human resources personnel.

The employer arranged to have Mr. Willis evaluated by a doctor of the employer's choosing on April 24. That doctor diagnosed Mr. Willis with radial styloid tenosynovitis, tendonitis of the wrist in tendons near the thumb. The doctor referred Mr. Willis to occupational therapy, but released Mr. Willis to perform light-duty work. The doctor restricted Mr. Willis to right-hand grasping no more than 15 minutes per hour, restricted Mr. Willis from forceful grasping, and restricted Mr. Willis to wearing a thumb spica, a wrist brace that would immobilize his thumb. The medical restrictions were to be in effective at work and off work, 24 hours per day and seven days per week. The employer provided Mr. Willis with light-duty work that met the medical restrictions. The light-duty work included untangling large rubber bands and cleaning duties. By April 30, Mr. Willis began to experience pain in his shoulder in connection with sorting the rubber bands. Mr. Willis chose to go home early from work that day.

On May 1, 2018, Mr. Willis returned to the employer's doctor for a follow-up appointment. The doctor continued Mr. Willis occupational therapy and the same work restrictions. Mr. Willis mentioned his shoulder pain to the doctor. The doctor advised Mr. Willis that his shoulder pain was "break-in" pain and advised Mr. Willis to take ibuprofen or Aleve to relieve the shoulder pain. The doctor directed Mr. Willis to return on May 8, 2018 for a follow-up evaluation. The employer continued Mr. Willis in the same light-duty work assignment. Mr. Willis did not request a different work assignment. Mr. Willis decided that he needed to separate from the employment. On May 3, 2018, Mr. Willis notified the employer's human resources personnel that he was quitting the employment, effective immediately. Mr. Willis participated in an exit interview and then separated from the employment that same day.

On May 8, 2018, Mr. Willis returned to employer's doctor for a follow-up evaluation and was released to return to work without restrictions. Mr. Willis did not contact the employer to request to return to the employment.

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.

Workforce Development rule 817 IAC 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 that was without good cause attributable to the employer. The evidence establishes that Mr. Willis decision to quit the employment was due to a medical condition caused by the employment. The employer took reasonable and appropriate steps to provide evaluation, treatment and appropriate light-duty work. Prior to quitting the employment, Mr. Willis did not ask for a different light-duty assignment or threaten to quit if he was not provided with a different light-duty assignment. The weight of the evidence in the record fails to establish that it was necessary for Mr. Willis to leave the employment to avoid serious danger to his health.

Because the evidence establishes a voluntarily quit without good cause attributable to the employer, Mr. Willis is disqualified for benefits until he has worked in and been paid wages for

insured work equal to ten times his weekly benefit amount. Mr. Willis must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The May 18, 2018, reference 01, decision is affirmed. The claimant voluntarily quit the employment on May 3, 2018 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 ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs