

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY D STOCK

Claimant

APPEAL NO. 08A-UI-01732-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATION**

Employer

**OC: 01/13/08 R: 03
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.5-1-d – Medical Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Cargill Meat Solutions (employer) appealed a representative's February 8, 2008 decision (reference 01) that concluded Randy Stock (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 6, 2008. The claimant participated personally and through his wife, Kim Stock. The employer participated by Katie Holcomb, Human Resources Manager.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on May 16, 2006, as a full-time production employee. On or about March 13, 2007, the claimant suffered a work-related injury to his left middle finger. The claimant is left handed. The claimant underwent surgery on March 15, 2007, and was later released to return to work without restrictions by the physician assigned to his case. The claimant last saw the employer's medical unit on July 5, 2007.

The claimant stopped appearing for work after December 31, 2007. On January 7, 2008, the claimant completed an exit interview. He stated in that interview that he was leaving employment for a better job with more money closer to home even though he had not secured subsequent employment. He indicated there were no other problems. At the hearing, the claimant testified that he left because his hand bothered him. He did not mention this problem to the employer because he did not want them to offer him another job that would accommodate his medical condition. No physician told the claimant that he should quit his job because of his injury. The employer has a record of accommodating an work-related injury restriction.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment 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.

871 IAC 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.

Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. *Shontz v. IESC*, 248 N.W.2d 88 (Iowa 1976). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. *Raffety v. IESC*, 76 N.W.2d 787 (Iowa 1956).

No physician advised the claimant to quit work. The claimant has not met the requirements of *Suluki v. EAB*, 503 N.W.2d 401 (Iowa 1993) by notifying management of the employer of a physician's advice to quit due to the medical condition caused or aggravated by the work. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment that must be repaid.

DECISION:

The representative's February 8, 2008 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,128.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw