

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA A MILLER
Claimant

COLLIS INC
Employer

APPEAL 15A-UI-06561-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/21/14
Claimant: Appellant (1)

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 5, 2015, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on July 10, 2015. Claimant participated. Employer participated through human resource manager, Debra Bianchi.

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 was employed full time as a stock mover and finishing worker from October 16, 2013, and was separated from employment on May 26, 2015, when he quit. He injured his left shoulder at work on October 28, 2014, and had two shoulder surgeries. He is right-handed. He had work restrictions of no use of the left arm and the employer gave him light-duty work (office data entry) while under medical care. He was paid even if he had no work to do. Claimant complained he was bored with office work so Biachi asked Dr. Foad if he could do part sorting and inspection of parts weighing under one pound. He was released from medical care on May 26, 2015, when he reached maximum medical improvement (MMI). Dr. Foad did not assign a permanent impairment rating or permanent work restrictions but allowed sorting or finishing parts one-handed as tolerated. Claimant brought the release to Bianchi who offered him work sorting light parts since he was bored with office work. He would have also been able to perform office work as there was a lot to do. She also offered to provide Dr. Foad's information to his nurse case manager and see what she thought so asked him to return to his remaining office work in the meantime but claimant left the area and within ten minutes left his badge and a note saying he was quitting because he did not like the restrictions. Since claimant quit, Biachi did not follow up with the nurse case manager. Claimant had not been given a work assignment other than office work before he quit. He had no medical advice to quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is separated from the employment without good cause attributable to employer.

Iowa Code § 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. 871-24.25(35) 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 § 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 § 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

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.

Subsection d of Iowa Code § 96.5(1) provides an exception where:

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.

An employee's failure to return to the employer and offer services upon recovery from an injury "statutorily constitutes a voluntary quit and disqualifies an individual from unemployment insurance benefits." *Brockway v. Emp't Appeal Bd.*, 469 N.W.2d 256 (Iowa Ct. App. 1991). Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

Claimant did not present evidence in writing to employer that a physician suggested leaving the employment and no work restrictions were in force other than to work one-handed as tolerated. Since the employer attempted in good faith to find the claimant other light-duty employment but he rejected that without medical foundation or any attempt to try the available parts or office work, claimant has not established a good-cause reason for voluntarily quitting the employment.

DECISION:

The June 5, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant is separated from the employment without good cause attributable to employer. Benefits are withheld until such time as he works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css