

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRAD E BUHR
Claimant

CROP PRODUCTION SERVICES INC
Employer

APPEAL 19A-UI-08616-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/29/19
Claimant: Respondent (2)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Crop Production Services (employer) appealed a representative's October 23, 2019 decision (reference 01) that concluded Brad Buhr (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 25, 2019. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Chris Hunter, Hearings Representative, and participated by Veronica Schrock, Senior Human Resources Manager for Retail, and Tami Curci, Claims Specialist.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 17, 2016, as a full-time chemical/delivery driver. On August 20, 2019, the claimant's doctor restricted him from lifting more than ten-pounds due to a non-work related injury. He was also restricted from kneeling and squatting. The claimant's immediate supervisor left work due to a medical condition. On September 10, 2019, the claimant asked the employer for a clarification of his work duties. The Senior Human Resources Manager for Retail was able to fly to Iowa for a meeting with the claimant on September 27, 2019.

On September 27, 2019, the Human Resources Manager, the Division Manager, and the Branch Manager met with the claimant. In the meeting the employer saw the claimant's restrictions. The claimant expressed suicidal ideation. The employer immediately stopped the meeting and placed the claimant in contact with the employee assistance program (EAP). After

the claimant had a ninety-minute telephone conference with EAP, the employer placed the claimant on a paid leave through October 11, 2019.

The employer instructed the claimant to file for short-term disability and complete eight EAP sessions. The employer did not have work available with the claimant's restrictions. The claimant remains in contact with the employer and is considered an employee. He has completed three EAP sessions and continues to schedule future sessions. The employer has not received a doctor's note releasing him to return to work without restrictions on the two medical conditions.

The claimant filed for unemployment insurance benefits with an effective date of September 29, 2019. He has not received any unemployment insurance benefits after his separation from employment. The employer provided the name and number of Tami Curci as the person who would participate in the fact-finding interview on October 22, 2019. Ms. Curci did not receive notice of the fact-finding interview and, therefore, did not participate in the interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to two medical conditions. The claimant had a non-work related injury for which he had a doctor's note and he had a mental health issue. He did not provide the

employer with a note from a doctor with regard to the second issue. He was separated from work due to his medical conditions but not under the advice of his physician. The employer consented to his leaving. The claimant has not provided the employer with certification that he has recovered. In addition, the claimant has not offered services to the employer. The claimant has not met the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's October 23, 2019, 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn