

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWRENCE W GOETZMAN
Claimant

APPEAL NO. 10A-UI-15502-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCOTTISH RITE PARK INC
Employer

**OC: 10/03/10
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 29, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 4, 2011. Claimant participated. Employer participated by Teresa Phillips, business office manager, human resources manager, and Dennis Fredericksen, maintenance supervisor. The record consists of the testimony of Lawrence Goetzman; the testimony of Teresa Phillips; and Claimant's Exhibits A-G.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and
Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a retirement and long term care facility. The claimant was hired on November 30, 2009, as a full-time maintenance worker. His actual last day of work was September 28, 2010. He was terminated on October 6, 2010.

The events that led up to the claimant's termination began on September 13, 2010. The claimant went to the emergency room because his hand had gone completely numb and he was worried that he might have suffered a stroke. He was told that it was an orthopedic problem and that he needed to see an orthopedic surgeon as soon as possible for surgery. He made an appointment for September 30, 2010. The claimant informed his employer about his medical problem, including the need to have surgery. He filled out a request for leave. His supervisor, Dennis Fredericksen, was leaving for a two-week vacation and the claimant wanted to be sure that he was not leaving the department short-handed. Mr. Fredericksen told the claimant to go ahead and have his surgery.

The claimant's surgery was scheduled for October 5, 2010. Following surgery he was placed on restrictions by his surgeon. The employer received a copy of the restrictions and came to the conclusion that the claimant would never be able to perform the duties of his job. The employer demanded that the claimant come to the office on October 7, 2010. The claimant said he was on pain medication and could not drive. The employer told the claimant to take a cab. When the claimant arrived at the office, he was given a copy of a termination letter and told that he was discharged. The claimant tried to explain that the lifting restriction was temporary but the president, Daniel Boor, informed the claimant that he had never seen such restrictions.

The claimant received short term disability benefits until December 23, 2010. The claimant is presently looking for work and is able to do the work he has done in the past, including maintenance work and managing apartments.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

There is no evidence in this record that the claimant ever quit his job. The letter from the employer (Exhibit G) states that the claimant was terminated because of his non-work related restrictions. The employer made the decision to sever the employment relationship, not the claimant. Ms. Phillips testified that the claimant was terminated because the employer believed that the claimant would never be able to do the duties of his job. The claimant tried to explain to the employer that his restrictions against lifting were temporary following surgery but apparently Mr. Boor thought they were permanent or could be permanent. Whatever reason the employer had for terminating the claimant, the evidence is uncontroverted that it was the employer who initiated the separation of employment.

Since the claimant did not voluntarily quit his job, the evidence must be examined for misconduct. There is no evidence of misconduct in this record. The employer seems to take

the position that the claimant's leave was not approved because his leave slip was never signed. The claimant's supervisor was on vacation. Before he left, the claimant fully informed him on his medical condition and need for surgery. The failure to have a signed leave slip is the fault of the employer, not the claimant.

The final issue is whether the claimant is able and available for work. The claimant received short term disability benefits from the employer until December 23, 2010. The claimant is still under a doctor's care but is actively looking for work and is physically capable of doing the work he has done in the past. The claimant is deemed able and available for work as of December 23, 2010 and is eligible for benefits on December 23, 2010.

DECISION:

The decision of the representative dated October 29, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible as of December 23, 2010.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs