IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

EMMANUEL A KIIR
Claimant

FARMLAND FOODS INC
Employer

APPEAL NO. 10A-UI-13723-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/22/10
Claimant: Appellant (4/R)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Emmanuel A. Kiir (claimant) appealed a representative's September 29, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Farmland Foods, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 15, 2010. The claimant participated in the hearing. Becky Jacobsen appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit and, if so, was it for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on July 6, 2009. He worked full-time as a production worker on the second shift. His last day of work was July 26, 2010. He began calling in absences due to illness on July 27, 2010. The last call-in the employer had for the claimant was on August 2, which it treated as covering him through August 6. When the claimant was a no-call, no-show for work on August 9, August 10, and August 11, the employer considered the claimant to have voluntarily quit by job abandonment under its three day no-call, no-show policy. On August 12 the employer sent a letter to that effect to the claimant's last-known address.

The claimant had not called in after August 2 because he had become so ill that he was unable to function; he went to his local doctor on August 5, who indicated he needed to be taken to a hospital in Omaha for emergency intestinal surgery, which was done that same day. He was then hospitalized through August 26, most of which time he had a tube in his throat that precluded him from being able to communicate.

The claimant returned home late on August 26. He then received the employer's August 12 letter. On August 31 he called the employer and spoke with Ms. Jacobsen, the human resources manager, indicating that he had not called previously because of his hospitalization, but indicating he wished to return to work upon his release to work from his doctor, which would be in about four weeks. Ms. Jacobsen informed the claimant that as his job was ended, he could not automatically be returned to work and indicated he would have to reapply for a job.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit, he would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. 871 IAC 24.25 provides that, 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. However, an intent to quit can be inferred in certain circumstances. For example, a three-day no-call, no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

Where the quit is for medical or health reasons not shown to be attributable to the employer, the quit is disqualifying at least until the claimant has recovered and seeks to return to work. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b. Where a claimant has been compelled to leave employment due to a medical or health issue not caused or aggravated by the work environment, the claimant is not eligible to receive unemployment insurance benefits until or unless the claimant then recovers, is released to return to work by his physician, and in fact does attempt to return to work with the employer. 871 IAC 24.25(35).

Here, the claimant was compelled to leave the employment for a non-work-related medical issue, but he then contacted the employer seeking to return to work with the employer upon his release. However, his position was no longer available to him without applying for possible rehire. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Even though the employer had a good business reason for proceeding to fill the claimant's position, the separation is with good cause attributable to the employer and benefits are allowed as of August 31, the date he attempted to return to work, if he was then otherwise eligible.

An issue as to whether the claimant was able and available for work in any employment for the four-week period after his release from the hospital, through about September 23, 2010, arose during the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's September 29, 2010 decision (reference 01) is modified in favor of the claimant. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed as of August 31, 2010, if the claimant is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the able and available for work issue.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/kjw