

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RUBEN F CHAVEZ
Claimant

LEEPFROG TECHNOLOGIES INC
Employer

APPEAL 20A-UI-01221-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/19/20
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Ruben Chavez (claimant) appealed a representative's February 7, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with Leepfrog Technologies (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 26, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

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 December 18, 2017, as a full-time software support specialist. The claimant was experiencing some depression. On December 23, 2019, he properly reported his absence due to medical issues and used his last day of paid time off. He was not scheduled to work on December 24 and 25, 2019.

On December 26 and 27, 2019, he told the employer he could not work due to emotional issues. He took leave without pay. The employer suggested he call the employer's online support person at Unum. The claimant called the support person who identified herself as not being a therapist, nurse, or counselor. She said she had experience talking to people. The person at Unum told the claimant he should consider taking a break from work.

On December 30, 2019, the claimant talked to the employer's human resources person for about thirteen minutes. He explained that he had family, personal, and emotional problems. The claimant said he was quitting effective immediately.

The claimant did not see a medical person about his condition. He cares for his nephew, who has special medical needs, three to five times per week from 7:30 a.m. to 4:45 p.m.

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 a medical condition. He was not advised to do so by a physician. The employer consented to his leaving. The claimant has failed to provide the employer with certification that he has recovered. In addition, the claimant has failed to offer his services to the employer. The claimant has failed to meet three of the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's February 7, 2020, decision (reference 01) is affirmed. 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