IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JASON V SKILLEN Claimant **SUKUP MANUFACTURING CO.** Employer	**APPEAL 22A-UI-05756-DZ-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 01/09/22** **Claimant: Appellant (2R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Jason V Skillen, the claimant/appellant, filed an appeal from the February 23, 2022, (reference 01) unemployment insurance decision that denied benefits because of a January 9, 2022 voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on April 14, 2022. Mr. Skillen participated personally. Judith O'Donohue, attorney, represented Mr. Skillen. The employer participated through Cassandra Hecker, human resources generalist. Margaret Standish-Bruce, associate corporate counsel, represented the employer. The administrative law judge took official notice of the administrative record. Claimant's Exhibits A was admitted as evidence.

ISSUE:

Did Mr. Skillen voluntarily quit without good cause attributable to the employer?
Is Mr. Skillen able to and available for work?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Skillen began working for the employer on May 24, 2021. He worked as a full-time sheer press person. His employment ended on August 6, 2021.

Mr. Skillen has had ongoing medical issues with his feet for some time, including before he began working for the employer. On, or about June 11, the employer provided Mr. Skillen and other employees in his department with new floor mats because the previous floor mats were worn out. Sometime in July 2021, Mr. Skillen went to a Mercy medical clinic for issues with his feet because he could not stand on his feet due to swelling. Mr. Skillen's job required him to stand for prolonged periods. The clinic Mr. Skillen went to is attached to the one of the employer's buildings but operates independently and does not share information with the employer, except to the extent that a patient may consent to information sharing. Mr. Skillen assumed the clinic was the employer's in-house clinic and that the clinic would share information with the employer without any action on his part. Mr. Skillen told his supervisor

about the doctor visit. Mr. Skillen did not file a worker's compensation claim and he did not request to see the employer's worker's compensation doctor.

The Mercy clinic doctor sent Mr. Skillen to a specialist. Mr. Skillen told his supervisor about the specialist's appointment. The specialist advised Mr. Skillen to not stand on his feet for prolonged periods. The specialist wrote a doctor's note saying the same. Mr. Skillen picked up the specialist's note at the Mercy clinic. Mr. did not give the specialist's note to the employer because he assumed the clinic would share the information in the specialist's note with the employer. No one at the clinic told Mr. Skillen that they would share the information in the specialist's note with the employer. The clinic did not share the information in the specialist's note with the employer. However, Mr. Skillen did talk with his supervisor about his doctor visits. The supervisor told Mr. Skillen that there were no other jobs with the employer available to him. On Monday, August 2, Mr. Skillen told his supervisor that Friday, August 6 would be his last day because he could not stand because of medical issues with his feet. Mr. Skillen's employment ended on August 6, 2021. Mr. Skillen did not file a worker's compensation claim.

Mr. Skillen was unemployed from August 7 until he began working at TrinityRail Maintenance Services in December 2021. He worked for that employer as a full-time maintenance person moving railcars. Mr. Skillen was separated from employment with that employer on January 11, 2022. From the time the specialist gave Mr. Skillen the doctor's note through the hearing date, Mr. Skillen's doctor continues to advise him to not stand on his feet for prolong periods.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Skillen's separation from employment with this employer was with good cause attributable to the employer.

Iowa Code section 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 section 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 section 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) 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:
>
> Separation because of illness, injury, or pregnancy.
>
> a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.
>
> 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.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

> "Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Voluntary quitting within the meaning of section 96.5(1) is attributable to the employer "…[w]hen factors or circumstances directly connected with employment aggravate or cause illness or injury to an employee which makes it impossible for [the employee] to continue in the employment…" See, 871 IAC 24.26(6)"b", supra. See also, McComber v. Iowa Employment Sec. Comm'n, 254 Iowa 957, 962, 119 N.W.2d 792, 795-96 (1963) (claimant worked with woolen materials to which she developed an allergy). See also Ellis, 285 N.W.2d at 156 (claimant was allergic to natural Christmas trees, and one was at place of employment); Rafferty v. Iowa Employment Sec. Comm'n, 247 Iowa 896, 900, 76 N.W.2d 787, 789 (1956) (claimant contracted jaundice attributed to an on the-job back injury). When, however, such voluntary quitting is due to an illness or injury having no connection with the employment, the quitting is not attributable to the employer. Iowa Code § 96.5(1); Moulton v. Iowa Employment Sec. Comm'n, 239 Iowa 1161, 1165, 34 N.W.2d 211, 213 (1948) (claimant quit because of pregnancy). Where illness or disease directly connected to the employment make it impossible for a person to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. Raffety v. Iowa Emp't Sec. Comm'n, 76 N.W.2d 787 (Iowa 1956).

In this case, Mr. Skillen has feet issues, which were directly affected by his employment, because he could not avoid standing for prolonged periods. As a result, Mr. Skillen's health condition continued to deteriorate. The employer had no positions Mr. Skillen could take that did not required prolonged standing. Mr. Skillen's quit is directly attributable to the work environment, which aggravated his personal health condition. Mr. Skillen quit for good cause attributable to the employer. Benefits are allowed.

DECISION:

The February 23, 2022, (reference 01) unemployment insurance decision is REVERSED. Mr. Skillen voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided Mr. Skillen is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

REMAND:

The issue of Mr. Skillen's separation from employment with employer TrinityRail Maintenance Services is REMANDED (sent back) to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.

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Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

April 29, 2022
Decision Dated and Mailed

dz/mh