IOWA WORKFORCE DEVELOPMENT UNEMPLOYMENT INSURANCE APPEALS

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

TONY J DAVIS

Claimant

APPEAL NO. 06A-UI-08993-H2T

ADMINISTRATIVE LAW JUDGE DECISION

BERTCH CABINET MFG INC

Employer

OC: 08-06-06 R: 03 Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 28, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 25, 2006. The claimant did participate and was represented by Lynn Smith, Attorney at Law. The employer did participate through Mark Melcher, Benefits Coordinator, Gary Brandau, Safety Director and Dave Slaikeu, Department Leader. Claimant's Exhibit A was received. Employer's Exhibit One was received.

ISSUE:

Did the claimant voluntarily quit his employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a finish mill apprentice and lathe operator full time beginning June 16, 1992 through August 7, 2006, when he voluntarily quit.

The claimant quit because he believed the employer was asking him to perform work that violated what he believed to be his work restrictions. Earlier in 2006 the claimant had undergone surgery to his left arm as a result of a work-related injury. Thereafter, the claimant was on work restrictions which prohibited the use of his left arm and required that he not work in the plant itself, but only in the office. The claimant attended a doctor's appointment with his treating physician on July 13, 2006. During that visit, Dr. Steyers told the claimant, in front of his workers' compensation case manager, that he would not be allowed to return to work inside the plant for six to eight months.

On August 7 the claimant's employer told him that he would be working in the plant sweeping and that beginning that evening he would be required to start working on the 3rd shift. The claimant had not previously worked the 3rd shift and he was reluctant to switch shifts. The claimant immediately told his employer that he believed the work they were asking him to perform would violate his work restrictions. The employer had nothing in writing from Dr. Steyers or anyone else on August 7 to show the claimant that his treating physician had

given permission for him to perform the sweeping job. The claimant was upset with the assigned work, as he believed that in the past the employer had tried to make him violate his work restrictions. The claimant did not want to engage in any work that could possibly damage his already injured left arm.

The claimant attempted to contact Dr. Steyers on August 7 to confirm whether his restrictions had in fact been changed. On August 7, the employer had no document from Dr. Steyers indicating that the claimant's restrictions were different. The only information the employer had was a call from Tammy, the nurse case manager, who said she had discussed it with Dr. Steyers and he agreed the claimant could now work in the plant sweeping. Tammy did not memorialize her conversation with Dr. Steyers until August 23, two weeks after the claimant was asked to perform the changed work and to work the different shift. The claimant quit work rather than violate his work restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with good cause attributable to the employer.

Iowa Code section 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.

871 IAC 24.26(2), (4) 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:

- (2) The claimant left due to unsafe working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.

On August 7, when the employer asked the claimant to work in the plant and to switch his work shift, the claimant could understandably believe that he was being asked to violate his work restrictions, as Dr. Steyers had told him less than one month prior that he could not go back to work in the plant for at least six to eight months. The claimant made a good-faith effort to obtain confirmation from Dr. Steyers office but was not able to speak to the doctor, through no fault of his own. On August 7, 2006, the employer had absolutely nothing in writing from Dr. Steyers to show the claimant that his work restrictions had been changed. Under these circumstances, the administrative law judge finds the claimant's refusal to continue working in what he believed was an unsafe or intolerable work environment reasonable and justified. Thus, the claimant's leaving was with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The August 28, 2006, reference 01, decision is affirmed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary

Administrative Law Judge

Decision Dated and Mailed

tkh/kjw