

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JEREMY L JAYNES
Claimant

APPEAL NO. 18A-UI-07415-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWESTERN MECHANICAL
Employer

OC: 06/17/18
Claimant: Appellant (5)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jeremy Jaynes filed a timely appeal from the July 9, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Jaynes was discharged on June 5, 2018 for violation of a known company rule. After due notice was issued, a hearing was held on July 27, 2018. Mr. Jaynes did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Barbara Hojer, Human Resources Director, represented the employer.

ISSUE:

Whether Mr. Jaynes separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jeremy Jaynes was employed by Midwestern Mechanical as a full-time plumber apprentice from March 26, 2018 and last performed work for the employer on Friday, May 25, 2018. Joel Doeden, Sioux City Branch Manager, was Mr. Jaynes' supervisor. A jobsite foreman would oversee Mr. Jaynes' work at a particular jobsite. Mr. Jaynes' work hours would vary based on the needs of a particular project, but would generally be 7:00 a.m. to about 5:00 p.m., Monday through Friday.

After Mr. Jaynes completed his shift on Friday, May 25, 2018, he was next scheduled to work on Tuesday, May 29, 2018. Mr. Jaynes did not report for work that day and did not make contact with the employer to give notice of a need to be absent. The employer's absence reporting policy required that Mr. Jaynes give notice to the Sioux City office and to his jobsite foreman at least 20 minutes prior to the scheduled start of the shift if he needed to be absent. The policy was contained in the employee handbook that the employer provided to Mr. Jaynes at the start of his employment.

When Mr. Jaynes did not appear for work, the employer attempted to reach him by telephone. When that did not work, Julie Steffen, Executive Assistant, telephoned Mr. Jaynes' emergency contact, his wife and asked whether everything was okay. At that time, Mr. Jaynes' wife reported that Mr. Jaynes had been sending her text messages over the Memorial Day weekend stating that he was going to kill himself. Mr. Jaynes' wife stated that she did not know what to do. Ms. Steffen advised Mr. Jaynes' wife to contact law enforcement for assistance. At or before 1:23 p.m., Mr. Jaynes' wife notified the employer that police had located Mr. Jaynes and that Mr. Jaynes had been admitted to Unity Point Health Hospital in Sioux City. The circumstances of the hospital admission indicate that Mr. Jaynes was committed to the hospital due to serious mental illness that made him a danger to himself. Mr. Jaynes remained in the hospital until June 4, 2018. Mr. Jaynes did not make any contact with the employer subsequent to completing his shift on May 25, 2018. Aside from the memo provided by Unity Point Health on June 4, 2018, no one contacted the employer on behalf of Mr. Jaynes subsequent to the update that Mr. Jaynes' wife provided to Ms. Steffen at or before 1:23 p.m. on May 29, 2018.

On June 4, Barbara Hoyer, Human Resources Director, faxed a memo to Unity Point Health. In the memo, Ms. Hojer stated that she understood Mr. Jaynes was a patient at the hospital and that she assumed Mr. Jaynes was still at the hospital. Ms. Hojer asked for information regarding how long Mr. Jaynes would be off work. Ms. Hojer stated that if Mr. Jaynes returned to work in the near future, the employer would need a note authorizing him to return to work. At 3:43 p.m. on June 4, Ms. Hoyer received a written response from Unity Point Health. The response indicated that Mr. Jaynes had been in the hospital from May 29, 2018 to June 4, 2018, that he could return to work with no restrictions, and that Ms. Hojer could contact the Unity Point Health for more information if she needed it.

Mr. Jaynes did not make further contact with the employer and did not return to the employment. It was the employer's intention to allow Mr. Jaynes to return to the employment upon his release from the hospital on June 4, 2018 and his expected return to work on June 5, 2018.

REASONING AND CONCLUSIONS OF LAW:

Mr. Jaynes did not register a telephone number for the appeal hearing and did not participate in the appeal hearing. Accordingly, the evidence in the record is limited to the testimony of Barbara Hojer. The evidence in the record establishes that Mr. Jaynes voluntarily quit the employment by failing to return to the employment or make further contact with the employer subsequent to May 25, 2018.

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.

Iowa Code section 96.5(1)f 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:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

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.

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.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. The evidence establishes that Mr. Jaynes had a compelling reason to be away from the employment during the period of May 29, 2018 through June 4, 2018. However, the evidence in the record also establishes that Mr. Jaynes did not return to the employment following his hospitalization and discharge from the hospital on June 4, 2018. He still has not returned to the employment. The evidence fails to establish that a doctor advised Mr. Jaynes to leave the employment or that it was medically necessary for Mr. Jaynes to leave the employment. Accordingly, Mr. Jaynes is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Jaynes must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The July 9, 2018, reference 01, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs