

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES W TERPENNING
Claimant

APPEAL NO. 09A-UI-19103-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNION TANK CAR COMPANY
Employer

OC: 11-29-09
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 17, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 3, 2010. The claimant did participate. The employer did participate through Kelly Gillespie, Human Resources Representative.

ISSUE:

Did the claimant voluntarily quit his employment without 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 an inspector full time beginning December 27, 2004 through November 20, 2009 when he voluntarily quit.

The claimant was released to return to work without any work restrictions after his non-work-related shoulder injury on November 5, 2009. He returned to work for his shift, worked a short time, told the employer that he could not perform the job duties and left. At the time he left work he had no work restrictions. He went to his physician who placed him back on work restrictions that prohibited him from performing his work. The employer kept the claimant on leave until his FMLA and his accident and sickness were used up. The claimant's employment ended on November 20. On November 30, just three weeks after alleging he could not physically work, the claimant returned to his physician and had his physician lift his work restrictions. The claimant has been able to engage in all kinds of physical recreational activities including playing basketball and running, but the only thing physical he was not able to do was his job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 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 24.25(27) 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 § 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 § 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:

(27) The claimant left rather than perform the assigned work as instructed.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The claimant had no medical reason for failing to perform his job duties on November 5. His return to his physician to get his restrictions reinstated and then to get them lifted again convinces the undersigned that the claimant was physically capable of working on November 5 but simply chose not to. Under such circumstances his refusal to perform his job duties is a voluntary quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The December 17, 2009, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs