

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACKIE D HARWELL
Claimant

APPEAL NO. 13A-UI-10336-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUNN-O-MATIC CORPORATION
Employer

OC: 08/18/13
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Jackie Harwell (claimant) appealed a representative's September 9, 2013, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Bunn-O-Matic (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 4, 2013. The claimant participated personally. The employer participated by Jenny Robinson, Human Resources Manager.

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 May 9, 2013, as a full-time assembler. The claimant had weight loss surgery in May 13, 2013, and was returned to work without restrictions in July 2013. He took some extra time off and returned again in August 2013. The claimant had issues adjusting to work with his new lifestyle of eating, toileting, drinking water, and coping with the temperature in the workplace. He worked on August 12, 2013, but did not return to work or notify the employer of his absences after that date. Continued work was available had the claimant not resigned.

On September 15, 2013, the claimant was diagnosed with a pulmonary embolism. His physician restricted him from all work as of September 15, 2013. The claimant believes it may be six months before he will be released to work again.

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 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(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

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). The claimant's intention to voluntarily leave work was evidenced by his actions. He stopped appearing and quit work. When an employee quits work because he is dissatisfied with the work environment, his leaving is without good cause attributable to the employer. The claimant left work because he did not feel comfortable in his work environment after his surgery. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes he is not.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant's physician states that the claimant cannot work. He is considered to be unavailable for work after September 15, 2013. The claimant is disqualified from receiving unemployment insurance benefits beginning September 15, 2013, due to his inability to work.

DECISION:

The representative's September 9, 2013, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. 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. The claimant is disqualified from receiving unemployment insurance benefits beginning September 15, 2013, due to his inability to work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css