

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAVIS WULF
Claimant

NORWALK SEASONAL SERVICES, LLC
Employer

APPEAL 20A-UI-06229-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant Travis Wulf filed an appeal from a June 10, 2020 (reference 01) unemployment insurance decision that denied benefits based upon him voluntarily quitting his employment with Norwalk Seasonal Services, LLC (“Norwalk Seasonal Services”) on May 19, 2020. Notices of hearing were mailed to the parties’ last known addresses of record for a telephone hearing scheduled for July 17, 2020. Travis Wulf and his mother, Patricia Wulf, appeared and testified. No one appeared on behalf of Norwalk Seasonal Services. Exhibit 1 was admitted into the record. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

Wulf has worked for Norwalk Seasonal Services on two occasions as a full-time landscape laborer. Wulf first worked for Norwalk Seasonal Services from April 15, 2019 through December 2019. He left in December 2019 and worked for another employer. On April 27, 2020, Wulf returned to Norwalk Seasonal Services as a full-time landscape laborer. Clayton Garrison was his supervisor.

During his employment in 2019, Wulf began experiencing problems with his back. He continued to work. After he quit his employment with Norwalk Seasonal Services in 2019, Wulf continued to experience back pain. After Wulf returned to Norwalk Seasonal Services his back pain became worse.

Wulf went to his primary care physician. His primary care physician recommended Wulf find work that was less physical.

Wulf told Garrison he was experiencing back pain. Wulf asked if he could do lighter work. Garrison told him he was operating a small business with few employees and that he could not provide lighter work.

Wulf resigned from his employment on May 19, 2020 due to his back pain. He remains on good terms with Garrison.

After he resigned, Wulf underwent magnetic resonance imaging. He later underwent a lumbar spine computerized tomography exam. (Exhibit 1) The reviewing radiologist listed an impression of “[c]hronic bilateral L5 spondylolysis. With patient in supine position there is no evidence for significant spondylolisthesis of L5-S1.” (Exhibit 1).

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides an individual “shall be disqualified for benefits, regardless of the source of the individual’s wage credits . . . If the individual has left work voluntarily without good cause attributable to the individual’s employer, if so found by the department.

The Iowa Supreme Court has held a “‘voluntary quit’ means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer.” *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires “an intention to terminate the employment relationship accompanied by an overt act carrying out the intent.” *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). “Good cause” for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm’n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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 employer has the burden of proving that a claimant’s departure from employment was voluntary. *Irving v. Emp’t Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016).

871 Iowa Administrative Code 24.25(36) 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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

24.25(36) The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

871 Iowa Administrative Code 24.26(6) also 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:

24.26(6) 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

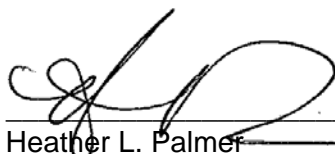
recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

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.

Wulf testified his work aggravated his back pain and back condition. Wulf informed Garrison he was experiencing back pain with his work and he requested an accommodation to perform lighter tasks. Garrison informed Wulf he could not accommodate him because he operates a small business. I find Wulf was compelled to leave his position with Norwalk Seasonal Services due to his back condition that was aggravated by his employment. No one appeared on behalf of Norwalk Seasonal Services to rebut Wulf's testimony. I find Wulf quit with good cause attributable to his employer. Benefits are allowed.

DECISION:

The June 10, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed in favor of the claimant/appellant. Benefits are allowed, provided the claimant is otherwise eligible.



Heather L. Palmer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

July 24, 2020
Decision Dated and Mailed

hlp/scn