

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J BERNINGHAUS
Claimant

APPEAL NO. 09A-UCFE-00008-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

OC: 02/22/08
Claimant: Appellant (5-R)

Iowa Code § 96.5(1)d – Voluntary Leaving (Illness/Injury)

STATEMENT OF THE CASE:

Michael Berninghaus (claimant) appealed a representative's April 1, 2009 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with US Postal Service (employer) for excessive unexcused absenteeism after being warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 12, 2009. The claimant participated personally. The employer participated by Tim Stupka, Maintenance Manager.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

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 July 23, 1994, as a full-time bulk mail back up machine operator. The claimant felt nervous and did not like it when supervisors watched him. He had a personality conflict with his supervisor. The claimant mentioned the issue to the employer. The supervisor did not work for the company as of October 2008.

The claimant saw his physician. The claimant was diagnosed with depression and restricted from work. The employer never received the doctor's restriction. The claimant stopped appearing for work after October 13, 2008. He rarely reported his absences. The employer called, left voice messages, sent the sheriff twice for wellness checks and called the claimant's parents.

On November 13 and 28, 2008, the employer talked to the claimant. The claimant understood the rules about calling in daily. He was working on his medical leave paperwork and was too nervous to call in his absence anytime after October 29, 2008. On December 12, 2008, the employer sent the claimant a separation letter. Continued work was available had the claimant not resigned.

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 24.26(6)b 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:

(6) Separation because of illness, injury or pregnancy.

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 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.

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. *Suluki v. Employment Appeal Board*, 503 N.W.2d 402 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. *Polley v. Gopher Bearing Company*, 478 N.W.2d 775 (Minn. App. 1991).

The claimant complained about his supervisor and he stopped working because he was nervous. The claimant never let the employer know that his nervousness or health condition was related to his employment. Even so, the supervisor that the claimant complained about was removed. The employer did not know of any other complaints. Inasmuch as the claimant did not give the employer an opportunity to resolve any further complaints prior to leaving

employment, the separation was without good cause attributable to the employer. Benefits are denied.

The issue of whether the claimant is able and available for work is remanded.

DECISION:

The representative's April 1, 2009 decision (reference 01) is modified with no effect. 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. The issue of whether the claimant is able and available for work is remanded.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css