IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHAEL D CONDRA
Claimant

CURWOOD INC
Employer

APPEAL NO: 14A-UI-13439-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/20/14
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 24, 2014, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 24, 2014. The claimant participated in the hearing. The employer did not respond to the hearing notice by providing a phone number where it could be reached at the date and time of the hearing as evidenced by the absence of a name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant voluntarily left his employment for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time treater operator for Curwood Inc. from August 18, 2014 to December 5, 2014. He voluntarily left his employment due to health concerns and because his health condition was not being accommodated by the employer under the Americans With Disabilities Act (ADA).

At the time of hire the claimant notified the employer he has Crohn's Disease and the employer asked him to complete paperwork stating he had a disability covered under the ADA.

The claimant has chemotherapy every week and was able to schedule his appointments on his days off because his work schedule provided him with at least one day off during the week. The claimant often had to shut down his line to use the restroom, sometimes up to 24 times per shift, as part of his illness and his supervisor was unhappy with the claimant when he had to do so and the claimant felt pressured not to do that which caused him to have a few accidents while at work and he would have to leave work to clean up and change his clothes.

The employer began getting busier and started working mandatory overtime. The claimant informed his manager and the department manager of his chemotherapy appointments in advance. The claimant had a chemo appointment scheduled November 22, 2014 and on November 21, 2014 his supervisor told him he had to work November 22, 2014 because he was the newest hire. He tried to find another employee to switch shifts with him but none of the other employees would trade. The claimant tried to tell his supervisor he could not miss his November 22, 2014 appointment and was told if he did not come in he would receive an attendance point and could lose his job. The claimant did not want to lose his job so he rescheduled his chemo appointment to his next day off which was November 26, 2014. The claimant was suffering the effects of missing his November 22, 2014 appointment throughout the week beginning November 23, 2014. When he misses a treatment he experiences flare-ups of his ulcerations, has bleeding and hemorrhaging, and has more frequent bowel movements because he cannot keep food in his system.

During the evening of November 25, 2014 the employer again told the claimant he had to work mandatory overtime November 26, 2014. After suffering the detrimental effects of missing his last appointment the claimant decided he could not afford to miss another appointment, notified the employer November 25, 2014 he would not be in November 26, 2014, and took the attendance point for his absence November 26, 2014.

The claimant worked from 7:00 a.m. to 7:00 p.m. and when the employer told the claimant he had to work overtime November 22 and November 26, 2014; the human resources department was already gone for the day. When the claimant returned to work November 28, 2014 he went to human resources and was told they just found the claimant's ADA paperwork, apologized to the claimant, stated the employer was required to accommodate the claimant's medical condition, and they needed to let him go to his treatment appointments.

The claimant believed he had three points after his November 26, 2014 absence out of a possible five attendance points allowed. He was then absent December 1 and 2, 2014 and went to work ill December 3 and 4, 2014. On December 5, 2014, believing his employment would be terminated for attendance because even though human resources said it would eliminate his attendance points it had not done so yet, the claimant resigned his position because he felt he had to choose between his health and his job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with 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.

The law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that he intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental

working conditions. Hy-Vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer of his concerns regarding his supervisor and department manager not honoring his ADA accommodations.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The claimant had an illness covered by the ADA. The employer acknowledged his medical condition at the time of hire and assured him that would not be an issue during his employment. Despite those assurances, however, the claimant's supervisor and the department manager did not honor his accommodations and effectively forced the claimant to miss one chemo appointment and threatened his job when he stated he had to go to his next chemo appointment as scheduled and could not work the second shift of mandatory overtime scheduled when he had chemo as a result. The claimant was so concerned about losing his job it caused him greater stress which negatively affected his illness. The claimant's supervisor and department manager also told him it could not allow him to shut down his machine every time he had to use the restroom, something that was included in his ADA accommodations. While human resources told him it would wipe out his previous points, it had not done so as of the time of the claimant's resignation and he was convinced he would lose his job due to absenteeism and he could not continue going to work when he was sick because he feared his job was in jeopardy due to the comments of his supervisor and department manager.

The employer was aware of the claimant's medical condition and the fact it needed to accommodate his medical situation under the ADA. He subsequently quit because the employer was not accommodating his condition. Consequently, the administrative law judge must conclude the claimant has demonstrated that his leaving was for good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The December 24, 2014, reference 03, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

_____
Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

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