

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY R WALSTON
Claimant

APPEAL NO. 16A-UI-12242-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 03/13/16
Claimant: Appellant (1)

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Larry Walston filed an appeal from the November 7, 2016, reference 07, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Mr. Walston had voluntarily quit on October 24, 2016 without good cause attributable to the employer and due to a non-work related medical condition. After due notice was issued, a hearing was held on December 2, 2016. Mr. Walston participated. Emelia Leeney represented the employer and presented additional testimony through Kelly Weaver and Katie Grimstead.

ISSUE:

Whether Mr. Walston separated from the temporary work assignment or the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: L.A. Leasing is a temporary employment agency. Larry Walston performed work for the employer in a single, full-time temporary work assignment. Mr. Walston began the assignment on April 29, 2016 and last performed work in the assignment on October 17, 2016. At that time, Mr. Walston was having trouble standing on his left leg while at work. Mr. Walston's left leg collapsed out from under him a couple times while he was at work. On October 18, 2016, Mr. Walston saw a doctor for the issue and the doctor took Mr. Walston off work for four days. The doctor subsequently took Mr. Walston off work indefinitely, while Mr. Walston underwent additional medical evaluation to determine the cause of the weakness in his left leg. Mr. Walston was never released to return to work. Mr. Walston has since been diagnosed with 60 percent deterioration in his spine that will require surgical intervention. After Mr. Walston's doctor had already taken Mr. Walston off work in connection with what turned out to be a serious medical condition, the client business for which Mr. Walston had been performing work notified L.A. Leasing on October 24, 2016 that the client business was ending the assignment. However, the assignment had already effectively been ended due to Mr. Walston's health condition and his doctor's decision to take him off work for an extended period. On October 24, an L.A. Leasing representative notified Mr. Walston that the client business had ended the

assignment and that Mr. Walston could not return for further assignments until he was released to work without restrictions. Mr. Walston was at that time not interested in further assignments and had not requested a further assignment, because he needed to address his serious health issue.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence in the record establishes a voluntary quit within the meaning of the law. The voluntary quit was due to Mr. Walston's non-work related serious illness. Mr. Walston left the assignment and the employment based on the advice of a licensed and practicing physician. Mr. Walston has not been released to return to work and has not returned to the employer, upon being released to return to work, to offer his services. For all of these reasons, the administrative law judge must conclude that Mr. Walston voluntarily quit without good cause attributable to the employer. Because the quit has so far been deemed without good cause attributable to the employer, the employer's account is relieved of liability for benefits. To become eligible for benefits, Mr. Walston must work in and be paid wages for insured work equal to ten times the weekly benefit amount subsequent to separating from the employment and meet all other eligibility requirement. Mr. Walston may pursue the alternative requalification path available only those who quit due to a non-work related medical condition. Mr. Walston has already demonstrated that he left out of necessity and upon the advice of a licensed physician to address a serious non-work related medical condition. Mr. Walston may requalify for benefits by (1) recovering from his illness, (2) having his recovery certified by a licensed and practicing physician, and (3) returning to the employer and offering to perform services to the employer. If at that time, no suitable, comparable work is available, then Mr. Mr. Walston would be eligible for benefits provided he meets all other eligibility requirements, the separation would become for good cause attributable to the employer, and the employer's account could be charged for benefits paid to Mr. Walston. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

DECISION:

The November 7, 2016, reference 07, decision is affirmed. The claimant voluntarily quit the employment due to a serious medical condition and upon the advice of a licensed and practicing physician. The quit was without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged. The claimant may requalify for benefits by (1) recovering from his illness, (2) having his recovery certified by a licensed and practicing physician, and (3) returning to the employer and offering to perform services to the employer. If at that time, no suitable, comparable work is available, then the claimant would be eligible for benefits provided he meets all other eligibility requirements, the separation would become for good cause attributable to the employer, and the employer's account could be charged for benefits. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs