

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GERALD W ANDERSON
Claimant

BILLION HAWKEYE INC
Employer

APPEAL NO. 21A-UI-01104-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/13/20
Claimant: Appellant (5R)

Iowa Code Section 96.5(1)(d) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 1, 2020, reference 01, decision that disqualified the claimant for benefits and that stated the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharge for excessive unexcused absenteeism on September 13, 2020. After due notice was issued, a hearing was held on February 16, 2021. The claimant did not provided a telephone number for the hearing and did not participate. Dallas Grijalva represented the employer. Exhibits A through D were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KCCO.

ISSUES:

Whether the claimant as discharge for misconduct in connection with the employment.
Whether the claimant voluntary quit without good cause attributable to the employer.
Whether the claimant was laid off.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Billion Hawkeye, Inc. as a full-time automotive service technician/team lead from 2016 and last performed work for the employer on February 7, 2020. The claimant was then on an approved vacation through Friday, February 14, 2020. Effective Monday, February 17, 2020, the claimant went off work pursuant to the advice of his doctor so that he could undergo and recover from surgery to repair a non-work related torn rotator cuff and bicep. The claimant had been in a non-work related automobile accident in November 2019 and the need for surgery arose from the injuries sustained in that collision. At the time the claimant commenced his period off work, both parties understood that the claimant would be away from the workplace for an indefinite period expected to last at least six months and possibly 10 months. The claimant applied for, and the employer approved, a medical leave of absence under the Family and Medical Leave Act (FMLA) for a period not to exceed 12 weeks. The return to work date applicable to the FMLA leave was May 11, 2020. However, the employer and the claimant each understood at the time the leave was approved that the claimant would be unable to return to work by May 11, 2020.

On April 27, 2020, the employer mailed notice to the claimant regarding the impending May 11, 2020 expiration of the 12-week FMLA leave. In response to that correspondence, the claimant contacted the employer and stated that he was unable to return to work at that time because his doctor would not release him until possibly October or November 2020. The claimant did not provide the employer with medical documentation supporting his assertion that his doctor desired to keep him off work beyond the May 11, 2020 return to work date, but the assertion was consistent with the previous medical certification. The claimant did not request extension of his leave period. Under the employer's leave policy, there would only have been access to three weeks of leave if additional leave was requested and approved. The employer declined to maintain the employment beyond the 12-week FMLA leave period. The employer invited the claimant to reapply once he was release to return to work. The claimant retrieved his tools from the workplace on May 17, 2020. The claimant continued to receive short-term disability benefit through August 17, 2020.

The claimant asserts that he was released by his doctor to return to work with a 15-pound lifting restriction effective August 18, 2020, but has provided no medical documentation to support that assertion. The claimant would not be able to safely perform his regular duties for the employer with a 15-pound lifting restriction. Nor would the claimant be able to perform automotive repair work for another employer with a 15-pound lifting restriction. The claimant asserts that he was subsequently able to work without restrictions, but has provided no medical documentation to support that assertion. The claimant advises that his doctor left it to the claimant to decide what work he could tolerate and to decide when the claimant was able to work without restrictions. The claimant advises that his work search records were destroyed in a house fire.

The claimant established an original claim for benefits that was effective September 13, 2020. The claimant made weekly claims for each of the benefit weeks between September 13, 2020 and January 30, 2021. Iowa Workforce Development has not disbursed any benefits in connection with the claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(d) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Administrative Code rule 817-24.26(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.

Iowa Admin. Code r. 871-24.22(2)(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The weight of the evidence in the record establishes that the claimant voluntarily quit the employment effective May 11, 2020 without good cause attributable to the employer due to a non-work related injury. The claimant left upon the advice of a licensed and practicing physician. The claimant has presented insufficient evidence to establish that he recovered from the injury that took him off work. The claimant elected not to return to the employer to offer to perform services with proof of recovery. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount and must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The December 1, 2020, reference 01, decision is modified as follows. The claimant voluntarily quit the employment effective May 11 2020 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to 10 times his weekly benefit amount and must meet all other eligibility requirements. The employer's account shall not be charged.

This matter is **remanded** to the Benefits Bureau for investigation of a decision regarding whether the claimant has in fact been able to work and available for work within the meaning of the law since he established his claim for benefits. Such determination should include consideration of medical evidence.



James E. Timberland
Administrative Law Judge

March 04, 2021
Decision Dated and Mailed

jet/ol

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.