**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**TODD W SECHLER**
Claimant

**PIONEER HI-BRED INTERNATIONAL INC**
Employer

**APPEAL NO. 10A-UI-09009-JTT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 05/23/10**
**Claimant: Appellant (3)**

Section 96.5(1)(d) – Voluntary Quit
Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Todd Sechler filed a timely appeal from the June 17, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 10, 2010. Mr. Sechler participated. Kaylan Lempke, Disability Administrator, represented the employer. Exhibit A was received into evidence.

**ISSUE:**

Whether Mr. Sechler separated from 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: Todd Sechler was employed by Pioneer Hi-Bred International as a full-time production technician from 2006 and last performed work for the employer on July 31, 2009. Mr. Sechler's immediate supervisor was Tom Kellen, Plant Manager. Mr. Sechler's work for the employer required that he be able to lift 50-pound bags of soybeans. Mr. Sechler has chronic back problems. Mr. Sechler saw his chiropractor at the beginning of August 2009 and the chiropractor restricted Mr. Sechler from working for several days. Mr. Sechler subsequently slipped on stairs outside of work, which aggravated his back problems. On August 10, 2009, Mr. Sechler commenced an approved medical leave of absence. The leave was initially authorized under the Family and Medical Leave Act. In October 2009, Mr. Sechler underwent extensive surgery on his spine, which involved fusing vertebrae and implanting rods and screws in his back. The FMLA leave period expired on November 2, 2009. However, the employer's third-party disability benefits administrator approved Mr. Sechler for short-term disability benefits through February 15, 2010 and the employer allowed Mr. Sechler to continue on leave so long as he qualified for short-term disability benefits. Once the short-term disability period expired, the employer allowed Mr. Sechler to continue on an unpaid leave of absence while Mr. Sechler pursued long-term disability benefits through the employer's third-party disability benefits administrator.

On May 20, 2010, Tom Kellen, Plant Manager, sent Mr. Sechler a letter regarding his employment status. The letter indicated that the third-party disability benefits administrator had denied Mr. Sechler's claim for long term disability benefits. The letter indicated that Mr. Sechler's previous

position had been posted for a replacement. The letter indicated that Mr. Sechler could continue on unpaid leave until June 18, 2010, at which time the employer would deem the employment terminated if Mr. Sechler was unable to return to work or if the employer lacked work that would conform to Mr. Sechler's medical restrictions. The letter directed Mr. Sechler to forward any work release to the employer by May 26, 2010 so that the employer could determine whether it had work available to meet those restrictions.

Mr. Sechler made no further contact with the employer in response to the letter of May 20, 2010 that sought further information from Mr. Sechler. Instead, Ms. Sechler established a claim for unemployment insurance benefits that was effective May 23, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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 871 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 does establish a voluntary quit. Mr. Sechler failed to respond to the employer's May 20, 2010 request for medical release information so that the employer could determine whether it had any work available that would meet Mr. Sechler's medical restrictions. By that time, Mr. Sechler had been off work for nine and a half months. The May 20, 2010 letter explicitly stated that the employer was willing to consider other work duties that would conform to Mr. Sechler's medical restrictions. The letter explicitly stated that the employer would not consider the employment terminated unless Mr. Sechler failed to return by June 18, 2010. Mr. Sechler failed to provide the employer with the requested medical documentation. Mr. Sechler did not provide the employer, or Workforce Development, with medical documentation that would support his need for accommodations or supported his need to separate from the employment. Mr. Sechler did not ask the employer for accommodations. The evidence in the record fails to indicate that a doctor recommended that Mr. Sechler leave the employment.

The weight of the evidence in the record establishes that Mr. Sechler voluntarily quit for personal reasons and not for good cause attributable to the employer. Mr. Sechler is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Mr. Sechler.

Iowa Code section 96.4-3 provides:

> An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:
>
> 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a and (2) provide:

> Benefits 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.
>
> (1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that Mr. Sechler underwent major surgery on his spine in October 2009 and continued under the care of a physician after that. Mr. Sechler has failed to provide any medical documentation to indicate that he has been released to return to work with or without restrictions. The weight of the evidence fails to establish that Mr. Sechler has been able to work and available for work since he established his claim for benefits.

**DECISION:**

The Agency representative's June 17, 2010, reference 01, decision is modified as follows. The claimant voluntarily quit the employment 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, provided he is otherwise eligible. The employer's account shall not be charged. The claimant has not been able to work and available for work pursuant to the requirements of Iowa Code section 96.4(3) since he established his claim for benefits and is not eligible for benefits.

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James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/kjw