

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW SPINDEN,
Claimant

**DIA APPEAL NO. 22IWDUI0143
APPEAL 22A-UI-12130**

TRI CITY ELECTRIC of IOWA,
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/23/22
Claimant: APPELLANT (1)**

Iowa Code § 96.5(1) – Voluntary Quit Without Good Cause
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The Claimant/Appellant filed an appeal from the May 6, 2022 (reference 03) unemployment insurance decision that held Claimant ineligible for unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 13, 2022. Claimant, Mr. Matthew Spinden, participated personally. The Employer, Tri City Electric Co. of Iowa, (Tri City), appeared and participated through Ms. Nicole Leyendecker, Tri City's Human Resources and Safety Coordinator. The only exhibit submitted was a doctor's note by Claimant, which was admitted without objection.

ISSUES:

Whether Claimant voluntarily quit the employment with good cause attributable to Employer?
Whether Claimant is able to and available for work?

FINDINGS OF FACT:

For the reasons that follow, the administrative law judge concludes the Claimant quit employment for reasons not attributable to the Employer. Benefits are denied.

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an apprentice electrician by Tri City starting July 1, 2019. His workday varied depending on the particular worksite location. Shortly thereafter, in August, Claimant was pushed out of a chair by his then-girlfriend. He landed on a rock and suffered a herniated disc. Both parties agree this was not a work-related injury. Subsequently, the injury led to a fracture in Claimant's spine and multiple herniated discs. His last actual day on a job site for Tri City was April 26, 2021.

After the injury, Claimant sought medical treatment without relief. On or about April 7, 2022, Claimant notified Tri City that he could no longer work as an electrician for the company due to the injury. Tri City requested a doctor's note regarding the injury. On April 14, 2022, Claimant

provided the note and he was separated from employment with Tri City that day. The doctor's note, dated April 12, 2022, stated in part:

It is my medical opinion that Matthew L. Spinden has chronic low back, shoulder, and neck issues that we have been working with him to improve over the past year. He has done multiple different tests, injections, physical therapy, and unfortunately he will be unlikely to do his current job as an electrician in the future. He would not be able to do the basic tasks without pain and restrictions. Recommend not doing job as electrician going forward at this time.

Claimant testified that the injury would not be resolved until surgery is conducted and, thus far, four surgeons have refused to perform the procedure(s).

Ms. Leyendecker testified on behalf of Tri City, Claimant's employer. Tri City is a construction company. It will not hire employees with work restrictions because it is a construction company. There is no comparable electrician work available for Claimant.

Claimant does not deny that he quit Tri City. Additionally, there was no other work for him according to Tri City. Claimant maintains the quit was due to his medical condition(s).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds that the Claimant voluntarily quit without good cause attributable to the employer. Additionally, this determination is dispositive of the able-and-available-to-work issue.

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, the Claimant voluntarily quit his employment. As such, Claimant must prove that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(1). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

Iowa Admin. Code r. 871-24.26(6)(a)(96) provides:

The following are reasons for a claimant leaving employment with good cause attributable to the employer: . . . Separation because of illness, injury, or pregnancy.

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.

Here, Claimant testified that he quit due to his medical issues. His appeal statement, testimony, and his exhibit indicated the separation of employment was advised by his physician because the rigors of his work as an electrician for Tri City was incompatible with his non-work-related injury and the initial injury's sequelae. See *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534, 538 (Iowa 1985) ("When an employee's only reason for quitting a job is . . . injury[,] the statute and implementing regulations clearly require the employee to obtain a physician's recommendation to quit in order to avoid disqualification."). Further, he immediately notified Tri City, which accepted the quit. Tri City also did not have restricted, non-electrician, comparable work available. Finally, Claimant has not recovered from his injury.

There are a number of legal principles at issue here. "[W]hen factors or circumstances directly connected with employment aggravate or cause illness or injury to an employee which makes it impossible for him to continue in the employment, quitting for this reason is for good cause attributable to the employer, even though the employer is free from fault." *Shontz v. Iowa Emp. Sec. Comm'n*, 248 N.W.2d 88, 91 (Iowa 1976) (citations omitted). However, "[v]oluntary quitting is not attributable to an employer when it is caused by illness [or injury] not connected to the employment." *Id.* Further, "a fair and reasonable interpretation of section 96.5(1)(d) compels [the conclusion] that unemployment benefits will be afforded under that exception where a claimant is fully recovered and his former position was not held open upon his return." *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985) (emphasis added). See *Geiken v. Lutheran Home for the Aged Ass'n*, 468 N.W.2d 223, 226 (Iowa 1991) (citing approvingly "the full recovery standard [*Hedges*] establishes"). "Failure to return to the employer and offer his services upon recovery from an injury statutorily constitutes a voluntary quit and disqualifies an individual from unemployment benefits [under Iowa Code § 96.5(1)(d)]." *Brockway v. Emp. Appeal Bd.*, 469 N.W.2d 256, 258 (Iowa Ct. App. 1991). Compare *White v. Emp. Appeal Bd.*, 487 N.W.2d 342, 346 (Iowa 1992) ("By his own admission, and pursuant to his cardiologist's instructions, he is unable to drive a truck as a result of his defibrillator implant and the potential for lapses of consciousness. Consequently, the subparagraph (d) exception to the subsection one disqualification is not applicable to White's situation.").

It is unclear whether the Claimant's sequelae were due to his original injury or his subsequent work at Tri City as an electrician, or some combination of both. The physician's note does not address the causation of his "chronic low back, shoulder, and neck issues." Moreover, it is unclear that Claimant gave Tri City a chance to make some accommodation to permit his

continued employment, despite Tri City's testimony that it would not hire employees with restrictions.¹

[I]n *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402 (Iowa 1993)[,] the court held, before quitting, an employee must give an employer notice of work-related health problems and that the employee intends to quit unless those problems are corrected or the employee is otherwise reasonably accommodated. . . . Absent such notice, the employee has left work voluntarily without good cause attributable to the employer and is not entitled to unemployment compensation benefits.

Manley-Scavo v. Am. Rep. Ins. Co., No. 98-1084, 1999 WL 710818, at *2 (Iowa Ct. App. Aug. 27, 1999). The physician's note does not indicate any accommodation would allow Claimant to work as an electrician.

Nonetheless, assuming for the sake of argument that Claimant's subsequent spinal fracture and herniated discs were caused or exacerbated by his electrician work at Tri City, Claimant has not fully recovered at any point on this record. Unfortunately, he suffers from a chronic condition.

"Section 96.5(1)(d) specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is *fully recovered* and the employer has not held open the employee's position." *Gilmore v. Emp. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) (emphasis in original; citations omitted). These principles favor Tri City and the denial of unemployment benefits to Claimant.

However, when a non-work injury prevents an employee from performing his work duties, it may be considered an involuntary quit in some circumstances. *Sharp v. Emp. Appeal Bd.*, 479 N.W.2d 280, 283 (Iowa 1991) ("The general premise of the *Perkins* reasoning is that there may be circumstances in which an employee voluntarily leaves his employment but such leaving should be considered involuntary for purposes of unemployment compensation.") (citation omitted). In *Sharp*, the employee contracted Hepatitis and, therefore, could not work around food as a meat cutter in a turkey processing plant. The *Sharp* case favors Claimant superficially.

Also favoring Claimant is the public policy behind unemployment insurance benefits. "The purpose of our unemployment compensation law is to protect from financial hardship workers who become unemployed through no fault of their own. See Iowa Code § 96.2. We are to construe the provisions of that law liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp. Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997) (citation omitted).

Ultimately, upon review of the record, this case is a voluntary quit for a reason not attributable to Tri City. Here, Claimant informed Tri City that he would have to quit working there as an

¹ It is noted that Tri City's statement that it will not employ individuals with restrictions is troublesome because a broad, unqualified statement could theoretically be construed as unlawfully discriminatory in some contexts. See e.g. Iowa Code § 216.6(1)(a) ("It shall be an unfair or discriminatory practice for any . . . Person to . . . discriminate in employment against . . . any employee because of the . . . disability of such . . . employee, unless based upon the nature of the occupation.").

electrician. When asked for a doctor's note, Claimant provided it. The note does not indicate that Claimant will fully recover, and recommended he not work as an electrician indefinitely. Claimant did not request the duties of an electrician be somehow accommodated by Tri City (nor could he on the evidence presented at the hearing). In fact, he is working in a non-electrician field today. Claimant has not fully recovered. *Sharp* is distinguishable because there the employee's medical condition would imperil the employer's operations. Claimant's work as an electrician does not imperil Tri City – it imperils Claimant.

Accordingly, Claimant is not entitled to benefits. This determination is dispositive and moots the issue of whether Claimant is able and available to work pursuant to Iowa Code § 96.4(3). "Although a claimant cannot qualify for benefits unless he is able to work and available for work, he may be disqualified for benefits under s 96.5(1) even when he meets that condition." *Shontz*, 248 N.W.2d 88, 90 (Iowa 1976).

Benefits are denied.

DECISION:

The May 6, 2022 (reference 03) unemployment insurance decision is affirmed. Claimant voluntarily quit and is separated from employment without good cause attributable to employer. Unemployment benefits are withheld in regards to this employer until such time as Claimant is deemed eligible.



Forrest Guddall
Administrative Law Judge
Iowa Department of Inspection and Appeals
Wallace State Office Building, Third Floor
Des Moines, IA 50319

July 20, 2022

Decision Dated and Mailed

FG/aa

CC: Matthew Spinden, Claimant (by first class mail)
Tri City Electric Co. of Iowa, Employer (by first class mail)
Joni Benson, IWD (email)

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

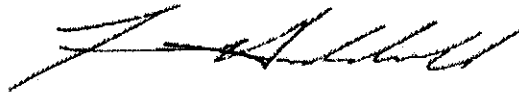
Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.

Case Title: SPINDEN V. TRI CITY ELECTRIC CO OF IOWA
Case Number: 22IWDUI0143
Type: Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'F. Guddall', written over a horizontal line.

Forrest Guddall, Administrative Law Judge