

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BUCUMI SIMON
Claimant

APPEAL NO. 13A-UI-09825-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 07/28/13
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Bucumi Simon filed a timely appeal from the August 21, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 30, 2013. Mr. Simon participated. Kirundi-English interpreter Rushimisha Byringiro assisted with the hearing. At the time set for the hearing, the employer representative was not available at the number the employer had provided for the hearing. The administrative law judge took official notice of the agency's record (APLT) documenting the name of the representative and the number the employer had provided for the hearing.

ISSUE:

Whether Mr. Simon 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: Bucumi Simon was employed by Tyson Fresh Meats as a full-time production worker from 2008 and last performed work for the employer in November 2012. At that time, a doctor diagnosed Mr. Simon with a serious mental health condition and advised him not to work. Since Mr. Simon ceased performing work for the employer, Mr. Simon has never returned to the employer with medical proof that he has been released to return to Tyson Fresh Meats. Mr. Simon made some contact with the employer about returning to work, but he did not provide proof he had been released to return to the employment. Mr. Simon asserts that he was released to return to work on August 30, 2013.

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 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 evidence in the record indicates that Mr. Simon quit the employment due to a non-work-related mental health condition and did so upon the advice of his doctor. Mr. Simon has never returned to the employer to ask for his job with proof that he has been released to the employment. Mr. Simon quit the employment without good cause attributable to the employer. Mr. Simon is disqualified for unemployment insurance benefits. Mr. Simon can requalify for benefits by obtaining proof that he has been released to return to the employment, returning to the employer to offer that proof, and asking for his job back. If the employer does not have the same or similar employment for Mr. Simon, then Mr. Simon's separation will have become for good cause attributable to the employer. Otherwise, Mr. Simon 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.

DECISION:

The agency representatives August 21, 2013, reference 01, decision is affirmed. The claimant quit the employment without good cause attributable to the employer due to a non-work-related mental health condition and did so upon the advice of his doctor. The claimant is disqualified for unemployment insurance benefits. The claimant can requalify for benefits by obtaining proof that he has been released to return to the employment, returning to the employer to offer that proof, and asking for his job back. If the employer then does not have the same or similar employment for the claimant, then the claimant's separation will have become for good cause attributable to the employer. Otherwise, the claimant's 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs