IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAMES W WHEELER
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL NO. 17A-UI-05978-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/07/17
Claimant: Appellant (1)

Iowa Code Section 96.5(1)(d) – Voluntary Quit for Medical Reason

STATEMENT OF THE CASE:

James Wheeler filed a timely appeal from the May 31, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Wheeler voluntarily quit on May 4, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 26, 2017. Mr. Wheeler participated and presented additional testimony through Katie Chism and Al Williams. The employer did not participate in the appeal hearing. The employer registered a telephone number for the hearing and named Eric McGarvey as the employer's representative for the hearing. However, Mr. McGarvey was not available at the registered number at the time of the hearing.

ISSUE:

Whether Mr. Wheeler's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Wheeler was employed by Whirlpool Corporation as a full-time assembler from October 2016 until May 4, 2017, when he voluntarily quit the employment. Mr. Wheeler's regular work duties involved putting together refrigerator doors and installing handles on the doors. Mr. Wheeler's usual work hours were midnight to 7:00 a.m., Sunday evening through Friday morning. Mr. Wheeler was also required to work mandatory overtime two Saturdays per month. Larry Seaton, third shift supervisor, was Mr. Wheeler's supervisor. Additional line supervisors worked under Mr. Seaton.

On March 16, 2017, Mr. Wheeler suffered two broken toes on his right foot when a refrigerator door landed on his foot. The affected toes were the two smallest toes on his foot. Mr. Wheeler reported his injury to the nurses at the company's first-aid station. The nurses told Mr. Wheeler that his foot did not look broken because he could still move his foot. Mr. Wheeler's foot appeared severely bruised. The nurses at the first aid station wrapped Mr. Wheeler's foot with an ace bandage and gave him ice to put on his foot. The nurses provided Mr. Wheeler with a number Mr. Wheeler could call if he felt he needed additional medical attention. That number

went to the head nurse at Whirlpool, Nate. Mr. Wheeler returned to the next day. During the shift, Mr. Wheeler returned to the first aid station and told the nurses that his foot looked bad. The nurses again told Mr. Wheeler that his foot did not look broken and told him to keep icing his foot if the ice made the foot feel better. Mr. Wheeler returned to his work duties. Mr. Wheeler returned for his next shift on March 19, 2017 and once again went to the first aid station to speak with the nurses about his foot. Mr. Wheeler had taken photos of his foot to share with the nurses. Once again, the nurses told Mr. Wheeler that his foot did not look broken. Mr. Wheeler told the nurses that his foot felt awful. Mr. Wheeler returned to his work duties. Mr. Wheeler continued to report for work for the next several days.

On March 29, 2017, Mr. Wheeler stopped at a grocery store to get something to eat before he headed to work, stepped on a pebble in the parking with his right foot, and felt pain that caused him to conclude that he should not report for work that night. Mr. Wheeler notified the employer he would be absent. Mr. Wheeler subsequently made a medical appointment at Unity Point so that he could have his foot examined.

On April 3, 2017, Mr. Wheeler used his employment-based health insurance to have a doctor at UnityPoint examine his foot. The doctor ordered x-rays of Mr. Wheeler's foot. The doctor prescribed hydrocodone for the pain in Mr. Wheeler's foot. Mr. Wheeler reported for work that evening. On April 4, 2017, the UnityPoint doctor's office notified Mr. Wheeler that he needed to come in immediately. At that point, Mr. Wheeler learned that each of the two smallest toes on right foot was indeed broken. The Unity Point doctor placed Mr. Wheeler in an orthotic walking boot. The doctor restricted Mr. Wheeler to performing light-duty work and indicated that Mr. Wheeler should not perform "aggressive work." Mr. Wheeler contacted Whirlpool's head nurse, Nate. Mr. Wheeler provided Nate with an update of his medical and asked Nate what he wanted Mr. Wheeler to do. Nate did not have an answer at that time.

On the evening of April 4, 2017, Mr. Wheeler reported for work wearing the walking boot. A nurse directed Mr. Wheeler to sit in a corner area of the factory near the first aid station and ice his foot. The employer provided Mr. Wheeler with a chair to sit on. While in that area away from production, Mr. Wheeler could sort screws on a table if he was inclined. The nurse told Mr. Wheeler that he could bring a book from home and read the book during his shift. Mr. Wheeler continued to report to the workplace for his shifts, but the employer continued to have him rest in a corner of the facility.

On April 11, 2017, a doctor that Whirlpool has come to the plant twice per week briefly met with Mr. Wheeler. When the Whirlpool doctor asked Mr. Wheeler how he was doing, Mr. Wheeler told the doctor that he was dissatisfied with the first aid nurses' handling of his initial injury report and follow-up visits to the first aid station. The doctor indicated that he had handpicked the nurses at the first aid station. Mr. Wheeler had heard rumors about Whirlpool allegedly ill-treating injured employees. Mr. Wheeler mentioned this concern to the doctor. The Whirlpool doctor had Mr. Wheeler contact UnityPoint to get a copy of his foot x-rays so that the Whirlpool doctor could review them. Mr. Wheeler complied. The Whirlpool doctor reviewed the x-rays and then told Mr. Wheeler he could not tell whether the second smallest toe was broken. Whirlpool doctor told Mr. Wheeler that he would go along with the UnityPoint doctor's assessment that both toes were broken.

During Mr. Wheeler's shift on April 12, 2017, a Whirlpool nurse, Matt, came to Mr. Wheeler and told Mr. Wheeler, "We have a resolution to not being able to work on a broken foot." The nurse gave Mr. Wheeler a rubber bubble-shaped shield for Mr. Wheeler to wear on his foot while he wore the orthotic walking boot. Mr. Wheeler asked the nurse what he was supposed to do next and the nurse said, "Go back to work." At that point, Mr. Wheeler returned to his regular duties.

On April 13, 2017, Mr. Wheeler took to the Whirlpool first aid station paperwork documenting the medical evaluation and treatment he had received at UnityPoint. The documentation included a bill for a $50.00 co-pay or other expense not covered by Mr. Wheeler's health insurance and a statement of the medical restrictions imposed by the UnityPoint doctor. When Mr. Wheeler handed the paperwork to the Whirlpool nurse, the Whirlpool nurse immediately stated that Whirlpool was not going to pay for $50.00 bill. Mr. Wheeler continued to perform his regular duties.

On April 17, 2017, Mr. Wheeler spoke with a supervising line leader about his injured status. At that time, the line leader told Mr. Wheeler that another employee had earlier broken his hand, had gone to his own doctor, and then "all types of heck broke out" at Whirlpool.

While Mr. Wheeler was working on April 18, he hit his injured toes on a pallet. The rubber guard the Whirlpool nurse had provided him, did not protect his foot from being reinjured. Mr. Wheeler called Nate, the head Whirlpool nurse after he finished his shift and told Nate, "I can't go on like this. My foot is bruised." Nate directed Mr. Wheeler to see the nurse at the first aid station when Mr. Wheeler reported for work that night. When Mr. Wheeler did as instructed by reporting to the nurses at the start of his shift, the nurses had not received any information from Nate. Mr. Wheeler showed the nurses his bruised foot and said, "This is what it looks like again." The nurses had Mr. Wheeler return to sitting in a corner of the plant. Mr. Wheeler took a book with him and read a book. During this new period of resting his foot, Mr. Wheeler noticed that here were vending machines nearby. Mr. Wheeler continued to report for shifts but rest his foot in the workplace.

On April 21 and April 24, 2017, Mr. Wheeler met with a psychiatrist at a Veterans Administration medical facility. Mr. Wheeler is a veteran. The psychiatrist provided Mr. Wheeler with a medication to assist Mr. Wheeler with that anger and frustration he was experiencing in connection with his injured foot and Whirlpool's handling of that matter.

On April 24, Jose Gongora, Whirlpool Health and Safety Manager, approached Mr. Wheeler and instructed Mr. Wheeler to report to Mr. Gongora's office at 6:45 a.m. Mr. Wheeler had not previously met Mr. Gongora. Mr. Wheeler complied with Mr. Gongora's directed to appear for a meeting. During that meeting, Mr. Gongora asked Mr. Wheeler, "What's been going on?" Mr. Wheeler told Mr. Gongora that he had been "sitting back here with nothing to do off and on for the last three weeks." Mr. Wheeler asked Mr. Gongora why that was. Mr. Wheeler told Mr. Gongora that he did not feel he was getting any care from the company nurses. Mr. Gongora questioned Mr. Wheeler about when and how he had injured his foot. Mr. Gongora told Mr. Wheeler that he understood Mr. Wheeler's concern about his foot and the nurses' handling of the matter on the date of injury. After the meeting, Mr. Wheeler sent an email message to Mr. Gongora. Mr. Wheeler attached photos of his injured foot. Mr. Wheeler stated in his email that he did not want to have any further contact with the two evening nurses regarding his foot due to their erroneous conclusion early on that his foot did not look broken. Mr. Gongora sent an email response, "Let's give them a change to work with you." Mr. Gongora said that he would thereafter be involved in the matter.

When Mr. Wheeler reported to the nurses' station on April 25 at the start of his shift, the nurse told him, "You need to go back to work." Mr. Wheeler replied, "Okay, says who?" The nurse then told Mr. Wheeler that Larry Seaton said that Mr. Wheeler needed to go back to work. Mr. Wheeler then walked to Mr. Seaton's office and waited to speak with Mr. Seaton. When Mr. Seaton became available, Mr. Wheeler asked Mr. Seaton, "What do you mean 'go back to work?'" Mr. Seaton said, "Go back to work—nothing in here says you can't go back to work."

Mr. Wheeler told Mr. Seaton that he had just been in Jose Gongora's office the day before. Mr. Seaton said he had not received any information from Mr. Gongora, but would take Mr. Wheeler's word for it. Mr. Seaton added, "This is just how it goes—that no one knows what is going on with you." At that point, Mr. Wheeler became upset. Mr. Wheeler told Mr. Seaton, "This is ridiculous. You have me sitting down there. No one came to speak with me. I'm stuck with the nurses." Mr. Wheeler told Mr. Seaton that it was outrageous that Mr. Seaton did not know what was going on. Mr. Seaton said, "I thought you went to see a specialist." Mr. Wheeler and Mr. Seaton continued to talk. During the meeting, Mr. Seaton issued a written warning to Mr. Wheeler for being late on April 21. At the end of the meeting, Mr. Seaton asked Mr. Wheeler not to quit the employment. This was in response to Mr. Wheeler's expression of frustration. Mr. Wheeler had not threatened to quit. After the meeting, Mr. Wheeler then returned to his designated resting spot near the first aid station.

Nate, the Whirlpool head nurse, scheduled an April 27, 2017 appointment for Mr. Wheeler to be examined by an orthopedic specialist at the University of Iowa Hospitals and Clinics. That doctor told Mr. Wheeler that his toes were still "very broken." The doctor advised Mr. Wheeler to avoid walking on uneven ground. The doctor advised Mr. Wheeler that he was ordering a different orthotic walking boot and an orthopedic shoe insert that Mr. Wheeler should use as needed. The doctor provided Mr. Wheeler with medical documentation indicating that Mr. Wheeler could stand and walk up to two hours at a time for a total of four hours per shift and that the remainder of the work day should involve sedentary duties. The doctor prescribed a medication to assist with nerve repair and provided Mr. Wheeler with another prescription for hydrocodone. The doctor advised Mr. Wheeler not to drive or perform work that required alertness while he was taking the hydrocodone. The employer had Mr. Wheeler return to the corner of the plant by the first aid station. The employer told Mr. Wheeler that there was no work that would meet Mr. Wheeler's restrictions.

Mr. Wheeler last appeared for a shift on Monday, May 1, 2017 and was once again instructed to sit in the corner of the plant.

On May 4, 2017, Mr. Wheeler delivered to the employer's human resources staff a written resignation memo that stated as follows:

> I'm informing Whirlpool Corporation that as of today I am resigning as an employee. I was injured at this facility back in March 16, 2017. I feel as though the medical, first-aid, or nursing staff was so inadequate about the injury I suffered. Telling me my toes don't look broke. Furthermore, to have to have [sic] to sit in an area all alone for 7 hours a shift felt like punishment. Almost like I was being broken, well I broke.
>
> Thank you for the employment.

At the time Mr. Wheeler quit the employment, he had not received the new orthopedic boot or the orthopedic shoe insert that the orthopedic physician had ordered on April 27, 2017. Mr. Wheeler had to wait for Whirlpool's workers compensation carrier to approve and obtain the items. As of May 4, 2017, Mr. Wheeler had not received the new orthopedic boot or shoe insert the doctor ordered on April 27.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005).

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 establishes a voluntary quit without good cause attributable to the employer, based on a work-related medical condition. Mr. Wheeler's frustration with the employer's handling of his foot injury is understandable. However, at the time Mr. Wheeler elected to quit the employment, it was not medically necessary for him to do so to avoid serious injury to his health. At the time Mr. Wheeler elected to quit the employment, the employer had recently arranged for a medical consultation with the orthopedist and was allowing Mr. Wheeler to refrain from working during his shift while he and the employer waited for him to receive the new orthopedic boot and orthopedic shoe insert. The employer's decision to have Mr. Wheeler sit in a chair during his shift, where he was allowed to read a book and take appropriate breaks, was not punitive and did not provide good cause attributable to the employer for leaving the employment. Mr. Wheeler has not presented insufficient evidence to establish that a medical professional or mental health professional advised him to leave the employment. Mr. Wheeler is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Wheeler must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The May 31, 2017, reference 01, decision is affirmed. The claimant voluntarily quit the employment on May 4, 2017 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.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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