IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

YIKA BRUZON
Claimant

SEABOARD TRIUMPH FOODS LLC
Employer

APPEAL NO. 18A-UI-06004-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/25/18
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Yika Bruzon filed an appeal from the May 18, 2018, reference 04, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Bruzon voluntarily quit on February 25, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 18, 2018. Mr. Bruzon participated. The employer did not register a telephone number for the hearing and did not participate. Spanish-English interpreter Silvia Puccetti of CTS Language Link assisted with the hearing. Exhibit A was received into evidence.

The hearing notice set forth a timeliness of appeal issue. However, Mr. Bruzon's appeal was on its face timely. The appeal deadline was May 28, 2018. That date was Memorial Day. Because the appeal deadline was a legal holiday, the appeal deadline was extended by operation of law, and pursuant to information set forth on the decision, to Tuesday, May 29, 2018. The Appeals Bureau received Mr. Bruzon's timely appeal on May 29, 2018.

ISSUE:

Whether Mr. Bruzon separated from employment with Seaboard Triumph Foods, L.L.C. for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Yika Bruzon was employed by Seaboard Triumph Foods, L.L.C. as a full-time production line worker for approximately four weeks when he voluntarily quit. Mr. Bruzon's duties on the production line involved trimming pork ribs. The work involved repetitive movement using of a knife. The employer accurately described the duties to Mr. Bruzon during the application, hiring and training process. The employer advised Mr. Bruzon that the employer was pleased with Mr. Bruzon's work. Mr. Bruzon had previously performed less physically-taxing line production work at a Tyson facility.

During the second week of the employment, Mr. Bruzon began to experience soreness in his arms in connection with the repetitive movement. Mr. Bruzon consulted with his trainers and the company nurse regarding his hand and arm soreness. The nurse advised Mr. Bruzen to take ibuprofen and rubbed a muscle soreness ointment on Mr. Bruzen's arms. The trainers advised Mr. Bruzen that the arm soreness he was feeling was part of the normal adjustment to the production line work and that the soreness would pass.

Toward the end of the brief employment, Mr. Bruzen requested to be moved to a less difficult line position. The employer granted the request. However, Mr. Bruzen found that his arm soreness continued or worsened.

Mr. Bruzon voluntarily quit the employment after concluding that he was unable to perform the work. Mr. Bruzon did not ask to be examined by a doctor and the employer did not offer such examination. Mr. Bruzon lacked money to consult with a physician of his choosing. Mr. Bruzon's decision to leave the employment was not based on advice from a licensed and practicing physician.

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.

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 establishes a voluntary quit that was without good cause attributable to the employer. The evidence in the record fails to establish a bona fide medical condition that made it impossible for Mr. Bruzon to continue in the employment because of serious danger to his health. Mr. Bruzon's decision to quit the employment was not based on advice from a licensed and practicing physician. Rather, Mr. Bruzon left the employment because he found it too physically taxing.

Because the evidence establishes a voluntarily quit that was without good cause attributable to the employer, Mr. Bruzon 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. Bruzon must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The May 18, 2018, reference 04, decision is affirmed. The claimant voluntarily quit the employment on or about February 25, 2018 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

jet/rvs