

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRETT A GENDREAU
Claimant

CAT SCALE COMPANY
Employer

APPEAL 21A-UI-00453-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/23/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 17, 2020 (reference 01) unemployment insurance decision that denied benefits to the claimant based upon claimant's separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on February 8, 2021. The claimant, Brett A. Gendreau, participated personally. The employer, CAT Scale Company, participated through witness Kevin Cole. The parties waived due notice of the issue of whether the claimant has been able to and available for work pursuant to Iowa Code § 96.4(3). Claimant's Exhibit A was admitted. The administrative law judge took official notice of the claimant's administrative records.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a maintenance mechanic. His employment began on January 19, 2019 and ended on August 4, 2020 when he voluntarily quit.

The last day he physically worked on the job was on May 27, 2020. He was carrying a large beam and it slipped and hit him. The force resulted in him falling down a flight of stairs. He sustained several injuries from the work-related accident. From May 27, 2020 through August 4, 2020 he was on a paid leave of absence from work recovering from his injuries. A worker's compensation claim for medical only was filed and his medical bills were covered by the insurance carrier. Claimant was released from the doctor with a permanent restriction not to lift more than 10 pounds. Claimant notified the employer of the doctor's restriction and that he would not be able to perform the job duties as maintenance mechanic as that job required lifting in excess of 10 pounds. The employer did not have any light duty work available to the claimant that fit within his restrictions. Claimant voluntarily resigned because his doctor recommended he do so.

Claimant has been able to and available for full-time work that does not require him to lift more than 10 pounds. He has been actively searching for full-time work as a manger or supervisor.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

Claimant had an intention to quit and carried out that intention by telling the employer he could not complete the job tasks, turning in his keys, leaving his shift and not returning for future shifts. As such, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer."). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956).

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

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

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 this case, the injury was attributable to the employment as it occurred at work on the job. Upon the advice of his doctor, the claimant was only able to lift up to 10 pounds. When the claimant presented the employer with this information, no light duty work was available to him as a reasonable accommodation. Claimant was compelled to leave employment as a result of the injury suffered on the job. As such, the separation from employment is not disqualifying.

The next issue is whether the claimant is able to and available for work. The administrative law judge finds that he is.

Iowa Code § 96.4(3) provides:

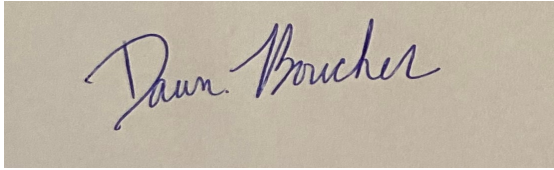
An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Claimant has established that he is able to and available for full-time work that does not require him to lift more than 10 pounds. He has been actively searching for full-time work as a manger or supervisor. He has established that he is able to and available for work pursuant to Iowa Code § 96.4(3). As such, benefits are allowed, provided he is otherwise eligible.

DECISION:

The November 17, 2020 (reference 01) unemployment insurance decision is reversed. Claimant voluntarily quit employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive style.

Dawn Boucher
Administrative Law Judge

February 19, 2021
Decision Dated and Mailed

db/kmj