

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES C MCLAUGHLIN
Claimant

APPEAL NO: 15A-UI-10347-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RAUEN PRECISION MACHINING INC
Employer

OC: 05/03/15
Claimant: Appellant (3)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

James McLaughlin filed an appeal from the September 8, 2015, reference 02, unemployment insurance decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an Agency conclusion that Mr. McLaughlin had voluntarily quit on August 21, 2015 without good cause attributable to the employer due to a non-work-related illness or injury. After due notice was issued, a hearing was held on September 29, 2015. Mr. McLaughlin participated. Jason Rauen represented the employer and presented additional testimony through Dennis Rauen.

ISSUE:

Whether Mr. McLaughlin'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 McLaughlin was employed by Rauen Precision Machining, Inc., as a full-time laborer from June 1, 2015 until August 13, 2015, when he voluntarily quit due to concerns about his back. Mr. McLaughlin had major back surgery 13 years ago. Mr. McLaughlin does not know what his medical restrictions are. Prior to commencing the employment, Mr. McLaughlin discussed with the employer his prior back injury. Mr. McLaughlin expressed to the employer that he believed he could perform the work the employer had available. The employer had Mr. McLaughlin assist on the employer's paint line. Most of the work involved manual labor. About 20 percent of the work involved operating a forklift. A couple weeks before Mr. McLaughlin quit the employment, he told the employer he had slipped while mowing his lawn. Mr. McLaughlin subsequently told the employer that he did not believe he could continue to perform his job anymore. Mr. McLaughlin then told the employer he would like to continue in the job a little longer. On August 13, 2015, Mr. McLaughlin left work early after telling the employer that he needed to go to the doctor. On August 17, 2015, Mr. McLaughlin notified the employer had he was quitting the employment. The quit was effective immediately. Mr. McLaughlin's quit was not based on advice from a licensed and practicing physician. Prior to quitting, Mr. McLaughlin

did not ask the employer for any accommodations. The employer continued to have the same work available for Mr. McLaughlin at that time he separated from the employment.

Mr. McLaughlin established an additional claim for benefits that was effective August 16, 2015 and that was based on a May 3, 2015 original claim date. Mr. McLaughlin made weekly claims for benefits for the six weeks between August 16, 2015 and September 26, 2015. Mr. McLaughlin still does not know what his medical restrictions are and has a medical appointment set for October 19, 2015 to attempt to clarify what his medical restrictions are. For the week ending August 22, 2015, Mr. McLaughlin could only recall contact with one employer, a former employer. At that time of that contact, Mr. McLaughlin asked what work the employer might have that would meet Mr. McLaughlin's unspecified accommodations. For the week that ended August 29, 2015, Mr. McLaughlin attended an Express Services job fair and interviewed for a security officer position at The University of Dubuque. Mr. McLaughlin could not recall any job contacts he made during the week that ended September 5, 2015. During the week that ended September 12, 2015, Mr. McLaughlin contacted a seed company regarding a sales position and contacted a golf course to inquire about mowing the grass. For the week that ended September 19, 2015, Mr. McLaughlin could only recall one job contact, for a sewing department position at Flexsteel. For the week that ended September 26, 2015, Mr. McLaughlin contacted Express Services, but did not apply for any jobs.

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.

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 without good cause attributable to the employer. Mr. McLaughlin voluntarily quit his full-time employment out of concern for his back. However, the quit was not based on advice from a licensed and practicing physician. The evidence fails to establish that it was necessary for Mr. McLaughlin to leave the employment. The weight of the evidence establishes that Mr. McLaughlin's decision to leave the employment was actually based on a slip and fall that occurred outside the work two weeks before he voluntarily quit the employment. Because the quit was without good cause attributable to the employer, the employer's account will not be charged for benefits paid to Mr. McLaughlin. Because the quit was not based on the advice of a physician and because the evidence failed to establish that it was medically necessary for Mr. McLaughlin to leave the employment, Mr. McLaughlin is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. McLaughlin must meet all other eligibility requirements.

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

Iowa Admin. Code r. 871-24.22(1)a, and (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

Mr. McLaughlin left his most recent employment because he believed he was unable to perform the work due to a medical condition. Mr. McLaughlin states that he does not know what work he is able to perform and hopes to get clarification on that when he meets with a doctor on October 19, 2015. Because Mr. McLaughlin asserts a physical impairment that affects his ability to perform work, but has not presented sufficient evidence to establish his ability to perform some particular type of work since he filed his claim for benefits, the administrative law judge must conclude that Mr. McLaughlin has not met the work ability requirement and is not eligible for benefits up to this point. This work ability disqualification will remain in place until Mr. McLaughlin has presented medical documentation to the Agency setting forth his medical restrictions, if any, and what type of work he might be able to perform. Mr. McLaughlin must meet all other eligibility requirements.

The weight of the evidence establishes that Mr. McLaughlin has not demonstrated an active and earnest search for work since he established his claim for benefits and, therefore, has not met the work availability requirement.

DECISION:

The September 8, 2015, reference 02, decision is modified as follows. The claimant voluntarily quit the employment effective August 17, 2015 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. He must meet all other eligibility requirements. The employer's account shall not be charged. The claimant has not demonstrated the work ability and work availability requirements since he established his claim for benefits and is not eligible for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs