

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES BEHRMANN
Claimant

PILOT TRAVEL CENTERS LLC
Employer

APPEAL 21A-UI-00398-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/16/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 17, 2020, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion he voluntarily quit work on August 16, 2020. The parties were properly notified of the hearing. A telephone hearing was held on February 8, 2021. The claimant participated. The employer did not participate. Exhibits A, B and C were admitted into the record. The administrative law judge took official notice of the agency records.

ISSUE:

Whether the claimant separated from employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a shift lead from February 24, 2021, until this employment ended on November 9, 2020, when he was terminated. The claimant's immediate supervisor was General Manager Chris Sprosty.

The claimant does not know how the employer's leave policy works. The employer promised to give him an employee manual, but he never received one.

In mid-July 2020, the claimant spoke with Mr. Sprosty about the inadequate cleaning procedures of the bathrooms at the employer's gas station, especially in light of the Covid19 pandemic. The claimant provided a picture of a cleaning log posted in the employer's gas station which shows cleaning was not being

The claimant last worked at the employer on August 16, 2020. On that day, the claimant requested to be placed on leave because he had to undergo a bilateral mastectomy on August 19, 2020. The claimant did not qualify for the Family Medical Leave Act, but the claimant was

approved for leave under the Americans with Disabilities Act. Mr. Sprosty had the claimant sign various forms, but did not explain why he was filling out the forms.

On April 19, 2020, the claimant underwent the bilateral mastectomy surgery. His surgeon, Ingrid Lizarraga, gave the claimant an expected release dated of October 22, 2020. This expected release date was based on the average amount of time it takes for patients to recover from the procedure.

On October 26, 2020, the claimant returned to speak with Mr. Sprosty. At the time, the claimant asked to be placed in a different role than lead shift because he was concerned the exposure to gasoline would aggravate his Li-Fraumeni Syndrome. Mr. Sprosty did not have open positions for him. Mr. Sprosty said he needed to provide a doctor's note outlining his restrictions to move the process forward.

On November 6, 2020, the claimant received the termination notice by certified mail. The claimant provided a copy of the termination notice. (Exhibit C) The termination notice is written by Human Resources Coordinator David Keck. It states the claimant's leave gave an estimated return date of October 22, 2020. It states the claimant would be terminated if he did not contact the employer by November 16, 2020.

On November 9, 2020, the claimant obtained a doctor's note from Dr. Varun Monga at the University of Iowa Clinics stating he had Li-Fraumeni Syndrome. Dr. Monga recommended the claimant avoid all carcinogens. The claimant provided this note to Mr. Sprosty later that same day.

The claimant believed he could work several positions within the gas station and be within the restrictions of Dr. Monga's note. The claimant wanted to work in the employer's kitchen. He could have also performed a general cashier role, as long as he was not required to pump gas in response to a request.

At the fact finding interview, the employer claimed the claimant did not give any explanation for his continued absence and abandoned his position.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was terminated while on leave.

Iowa Code section 96.5(1) 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.

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.

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.

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. *Suluki v. Employment Appeal Board*, 503 N.W.2d 402 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. *Polley v. Gopher Bearing Company*, 478 N.W.2d 775 (Minn. App. 1991).

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

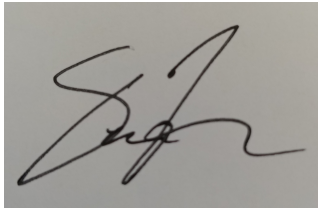
Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction*

Treatment Services v. Jackson and Employment Appeal Board, 810 N.W.2d 532 (Iowa Ct. App. 2012).

In this case, the claimant did not quit. On October 26, 2020, the claimant spoke with Mr. Sprosty about returning to work in a position that would not aggravate his Li-Fraumeni Syndrome. While he presented restrictions regarding his work on his return, this was to reduce the aggravation of his medical condition. Instead of exploring the options going forward, the employer terminated the claimant. Benefits are granted.

DECISION:

The November 17, 2020, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Sean M. Nelson
Administrative Law Judge
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February 25, 2021
Decision Dated and Mailed

smn/kmj