**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**RANDY S LEWIS**
Claimant

**SDH EDUCATION WEST LLC**
Employer

**APPEAL NO. 14A-UI-07660-JTT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 06/14/14**
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1)(d) – Voluntary Quit
Iowa Code Section 96.5(1)(g) – Requalification

**STATEMENT OF THE CASE:**

Randy Lewis filed an appeal from the July 18 2014, reference 02, decision that disqualified him for benefits based on an agency conclusion that he had voluntarily quit employment with SDH Education West, L.L.C., on September 9, 2013, without good cause attributable to that employer. After due notice was issued, a hearing was held on August 18, 2014. Mr. Lewis participated. Judy Jessen, Human Resources Manager, represented the employer. The administrative law judge took official notice of the agency's administrative record of wages reported for the claimant since the separation from this employer. Exhibits One through Five were received into evidence.

**ISSUES:**

Whether Mr. Lewis separated from the employment for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

Whether Mr. Lewis requalified for benefits after he separated from this employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Randy Lewis was employed by SDH Education West, L.L.C., Sedexo, as a full-time cook assigned to the Drake University cafeteria. Mr. Lewis had begun his employment with Sedexo in 2010. Mr. Lewis' immediate supervisor at Drake was Tammy Bartlett, Food Service Director. On May 19, 2013, the employer temporarily laid off Mr. Lewis in connection with closure of the Drake cafeteria during the summer break. At the time the employer notified Mr. Lewis of the layoff, the employer notified Mr. Lewis that he would be recalled to the employment on August 20, 2013.

On July 2, 2013, Mr. Lewis notified Ms. Bartlett that needed to undergo surgery in mid-July. The surgery was for a non-work-related hip replacement. Ms. Bartlett told Mr. Lewis that she would start the Family and Medical Leave Act (FMLA) application process by contacting the employer's Leave of Absence (LOA) Department. Ms. Bartlett told Mr. Lewis that he could

expect to receive a packet from the LOA department that he would need to complete the application information in order for his job to be protected under the Family and Medical Leave Act. On July 10, 2014, the employer mailed FMLA application materials to Mr. Lewis. Mr. Lewis received the FMLA application materials, but never returned his application or medical certification to the employer. Mr. Lewis underwent surgery on his hip on or about July 15, 2013.

On August 1, 2013, the employer's Leave of Absence Department mailed notice to Mr. Lewis that his leave of absence was not approved because he had not provided the required medical certification to support his request for leave. Though the notice advised Mr. Lewis that his leave was not approved, the notice also provided an August 12, 2013 deadline for Mr. Lewis to submit the FMLA application materials. Mr. Lewis did not respond to the August 1, 2013 notice.

After Mr. Lewis failed to return to work on August 20, 2013, the employer sent him a letter via UPS on August 29 2013. The letter indicated that Mr. Lewis' continued absence was not approved. The letter indicated that Mr. Lewis had until September 6, 2013 to contact the employer or the employer would conclude that he had abandoned the employment. UPS made three attempts to deliver the employer's letter to Mr. Lewis before it returned the letter to the employer on September 4, 2013 as undeliverable.

After Mr. Lewis underwent surgery on his hip in mid-July, he underwent a similar surgery on his other hip about six weeks later. Mr. Lewis never attempted to return to the employment. Instead, Mr. Lewis subsequently entered new employment.

Mr. Lewis established a claim for benefits that was effective June 15, 2014. Workforce Development set Mr. Lewis' weekly benefit amount at $293.00. While the Workforce Development Wage-A document references a $209.00 weekly benefit amount, the Database Readout (DBRO) sets forth the correct weekly benefit amount of $293.00.

The July 18, 2014, reference 02, decision set forth two paths by which Mr. Lewis could requalify for benefits. One was the standard requalification requirement that Mr. Lewis earn wages for insured work equal to ten times his weekly benefit amount after the separation date and that he meet all other eligibility requirements. The ten-times requalification amount was $2,930.00. After Mr. Lewis separated from the employment with Sedexo, and before he established the claim for benefits that was effective June 15, 2014, Mr. Lewis had three additional employers. In connection with that additional employment, Mr. Lewis earned and was paid $2,713.00.

The second path for requalification provided by the July 18, 2014, reference 02, decision pertained to voluntary quits due to non-work-related medical issues and was set forth as follows in the decision:

> TO BE ELIGIBLE FOR BENEFITS, YOU MUST HAVE:
> LEFT WORK ON THE ADVICE OF A LICENSED, PRACTICING PHYSICIAN;
> NOTIFIED YOUR EMPLOYER IMMEDIATELY;
> ATTEMPTED TO RETURN TO WORK AFTER RECOVERY WAS CERTIFIED BY A PHYSICIAN AND WAS TOLD BY YOUR EMPLOYER THAT WORK WAS NOT AVAILABLE

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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.

Mr. Lewis knew at the start of the temporary layoff that he was to return to the employment on August 20, 2013. The weight of the evidence indicates that Mr. Lewis voluntarily quit the employment in July 15, 2013 due to a non-work-related medical condition. Mr. Lewis' separation from the employment at that time was upon the advice of a physician. However, Mr. Lewis never attempted to return to the employment. Mr. Lewis never provided the employer with proof that he had recovered from his medical condition or that he had been released to return to work. The administrative law judge concludes that Mr. Lewis' voluntary quit was

without good cause attributable to the employer. Mr. Lewis is disqualified for benefits until he has worked in and been paid wages for insured work equal to 1tren times his weekly benefit amount. The employer's account will not be charged.

Iowa Code section 96.5(1)g 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:
>
> g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The weight of the evidence indicates that Mr. Lewis has not requalified for benefits under either requalification path. Since Mr. Lewis separated from the employment, he has not earned ten times his weekly benefit amount. Though Mr. Lewis' separation from the employment was upon the advice of a physician, Mr. Lewis made no further contact with the employer about returning to work. Mr. Lewis never contacted the employer with proof that he had recovered from his non-work-related medical condition or that a doctor had released him to return to work. Instead, he sought new employment and eventually secured new employment.

**DECISION:**

The claims deputy's July 14, 2014, reference 02, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The employer's account will not be charged. The claimant is disqualified for benefits until he has worked in and been paid wages equal to ten times his weekly benefit amount for insured work. The claimant has not requalified for benefits.

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James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

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