IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ROBERT J DUNN
Claimant

CARGILL MEAT SOLUTIONS CORP
Employer

APPEAL NO: 12A-UI-04880-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/25/12
Claimant: Appellant (1)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

Robert J. Dunn (claimant) appealed a representative's April 18, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Cargill Meat Solutions Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 4, 2012. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on October 11, 2010. Since about October 2011 he worked full time as hog pusher in the cooler of the employer's Ottumwa, Iowa pork processing facility, working on the second shift. His last day of work was March 7, 2012.

On or about February 24, 2012 one of the claimant's coworkers had yelled at him. This caused the claimant to miss work due to stress and anxiety the week of February 27 through March 2. The claimant had discussed his situation with his doctor, but his doctor had not recommended that he quit. On March 2 the claimant met with a human resources representative to complain about what had happened with the coworker and to bring other concerns to the human resources representative's attention, such as that the department had no scheduled restroom breaks, but the employees were just to go and use the restroom when they needed to do so, but since there were no backup utility persons in the area to fill in for someone who went to the restroom, the absence from the area would make more work for the remaining employees. The claimant's coworkers then criticized him when he would leave the area for a restroom break. The claimant also complained about the fact that there was no supervisor who stayed in the

department to intervene and ensure that the employees who needed to take a restroom break could do so without mistreatment from their coworkers.

On March 7 each of the employees of the department were brought in and spoken to by the human resources representative and a supervisor about their behavior and the claimant's treatment. The claimant was the last of the department employees who was brought in. The supervisor who sat in told the claimant that some of the coworkers had commented that the claimant was not pulling his own weight of work in the department, to which the claimant took offense. He was told that his request to be transferred to another position was being approved, but there would be a delay. The length of the delay was not specified, but the claimant assumed that it would be 60 to 90 days; he did not advise the employer he did not believe he could wait that long.

He returned to his department and finished out the shift. There were no other specific incidents the remainder of the day, but the claimant believed that his coworkers were not speaking to him and were resentful that he had made a complaint. He decided to call in absences thereafter, and did so from March 8 through March 23, during which time he was seeking other employment. He did not recontact the employer or the human resources personnel during this time to indicate why he was off work or his intentions as far as returning to work or not, nor did he contact the union to inquire about the status of a grievance he had filed in January or February for the same issues.

On about March 23 he had discussions with a roofing company about doing some work, both a roofing project and a siding project. On March 26 he learned that the roofing work would not occur, but that the siding project was still available, and he agreed to do this project. He stopped calling into the employer at this point as he determined he was not going to return to work with the employer. It is not clear whether the work with the roofing company would have been as an independent contractor or as an employee. The claimant only worked on the siding project one day, March 28, and did not complete the project, nor was he paid for the work he had done. He interviewed for another position with a company in Des Moines on March 29 which was an independent contractor position; he worked in the position one day, March 30. When he was to return on April 2, he encountered car problems; he determined that the position was too far to drive on a regular basis.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit, he would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Under some circumstances, a quit for medical or health reasons is attributable to the employer. Iowa Code § 96.5-1. Where factors and circumstances directly connected with the employment caused or aggravated an employee's illness, injury, allergy, or disease can be good cause for quitting attributable to the employer. 871 IAC 24.26(6)b. However, in order for this good cause to be found, prior to quitting the employee must present competent evidence showing adequate health reasons to justify ending the employment, and before quitting must have informed the employer of the work-related health problem and inform the employer that the employee intends to quit unless the problem is corrected or the employee is reasonably accommodated. 871 IAC 24.26(6)b

The claimant has not presented competent evidence showing adequate health reasons to justify his quitting. Even if his doctor had recommended that he quit, while before quitting the claimant did inform the employer of the work-related health problem and on March 2 asked the employer's human resources personnel to take remedial action, the claimant failed to give the

employer's attempts to provide a remedy to correct or reasonably accommodated the reported problem.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a coworker or supervisor is not good cause. 871 IAC 24.25(6),(21), (22). Leaving for self-employment or to seek other employment where that other employment has not actually been established is not a quit attributable to the employer. 871 IAC 24.25(3),(19). While the claimant's work situation was perhaps not ideal, he has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's April 18, 2012 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of March 26, 2012, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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