

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PHILLIP LEWIS
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 19A-UI-09785-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/10/19
Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Phillip Lewis (claimant) appealed a representative's December 6, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from work with Express Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 8, 2020. The claimant participated personally. The employer participated by Marisa Sheldon, Recruiter. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services off and on from September 18, 2017, through November 7, 2019. He was last assigned to work at The Bedding Company as a full-time assembler. The claimant was able to perform his work with limited use of his left hand.

On November 4, 2019, the claimant appeared for work with an injured right hand. The injury was not work-related. After work, the claimant went to the emergency room and was not released until early morning on November 5, 2019. He was diagnosed with broken bones in his right hand and instructed not to return to work until November 6, 2019.

On November 6, 2019, he went to his primary physician. She sent the claimant to an orthopedic doctor to be placed in a cast. On November 6, 2019, the orthopedic physician released the claimant to return to work on November 6, 2019, "with the following restrictions". A box beside the words "Light Duty" was marked. At the bottom of the page the document said, "Other Restrictions: Limited use of right hand for 6 weeks".

The claimant returned to The Bedding Company with his hand in a cast and only two fingers visible: his thumb and index. The claimant gave The Bedding Company the doctor's note. The

Bedding Company did not have work for the claimant with the restrictions. On November 8, 2019, The Bedding Company contacted the employer and notified it of the claimant's situation.

On November 8, 2019, the employer left a message for the claimant asking him to contact the employer so they could be of help. The employer had work available for the claimant if the claimant provided a doctor's note with more specific restrictions or a doctor's note releasing him to return to work without restrictions.

The claimant remembers calling the employer on an unknown date, perhaps mid-November 2019, and waiting for the employer to respond. He also remembers stopping by the employer's office on an unknown date. The claimant did not give the employer any doctor's notes. The employer had no record of either of these contacts.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25(20) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

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). In this case, the employer is Express Services, not The Bedding Company. It appears the claimant had a conversation about his continued employment with The Bedding Company on November 6, 2019. He never had a conversation with his employer.

The claimant's intention to voluntarily leave work was evidenced by his actions. He stopped reporting to the employer because of his injury for more than ten working days. The claimant was unable to provide a date when he reported to the employer. When an employee is absent from work for more than ten working days for compelling personal reasons, His leaving is

without good cause attributable to the employer. The claimant left work for more than ten working days for compelling personal reasons. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's December 6, 2019, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn