

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MILENKO MIHAJLOVIC
Claimant

APPEAL 18A-UI-06845-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 06/03/18
Claimant: Appellant (5)

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Admin. Code r. 871-24.26(6)(b) – Separation Due to Illness or Injury
Iowa Code § 96.4(3) – Able to work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 21, 2018 (reference 01) unemployment insurance decision that denied benefits based upon claimant voluntarily quitting without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on July 11, 2018. The claimant participated personally. CTS Language Link provided language interpretation services to claimant. The employer participated through witness Katherine Schoepske.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Is the claimant able to work effective June 3, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time in the production department from July 6, 2011 until June 6, 2018. Claimant's job duties included shaving the hogs as they came down the production line.

On March 18 or 19, 2018, claimant injured his shoulder at work. He visited with the employer's physician and was given work restrictions to refrain from lifting more than five pounds and to refrain from repetitive lifting of the arm above the shoulder. The physician did not advise the claimant to voluntarily quit his job. Claimant continued to work for the employer, within his restrictions.

On June 6, 2018 claimant voluntarily quit because he felt he was in too much pain from the injury to continue working. Claimant has not fully recovered and he testified that he would not be able to return to work at this time due to the injury. There was continuing work available if claimant had not quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

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.

Claimant has established that the injury was work related, as is his burden; however, he must meet the requirements of the administrative rule cited above. In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). Iowa Code § 216.6 (previously 601A.6) requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination

itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also, *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987).

In this case, claimant did not voluntarily quit based upon the advice of a licensed practicing physician. Further, he did not inform the employer that he intended to quit unless he was reasonably accommodated. As such, the separation is without good cause attributable to the employer. Claimant's leaving the employment was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

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

Claimant credibly testified that he was unable to work due to injury at this time. As such, benefits are denied effective June 3, 2018 because claimant is unable to work due to injury.

DECISION:

The June 21, 2018 (reference 01) unemployment insurance decision is modified with no change in effect. Claimant voluntarily quit the employment without good cause attributable to employer. Further, claimant is unable to work **due** effective June 3, 2018 due to injury. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount and until claimant obtains a medical release to return to some type of work of which he is capable of performing given his education, training and work experience.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs