

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

FRED C SMITH
Claimant

APPEAL NO. 18A-UI-06091-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEATHERLITE INC
Employer

OC: 05/06/18
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Fred Smith filed a timely appeal from the May 23, 2018, reference 01, decision that disqualified him for unemployment insurance benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Smith voluntarily quit on March 12, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 19, 2018. Mr. Smith participated and presented additional testimony through Denise Macel. Teresa Fitzgerald represented the employer. Exhibits 1, 2 and A through K were received into evidence.

ISSUE:

Whether Mr. Smith separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Fred Smith was employed by Featherlite, Inc. as a full-time welder, beginning in 1988. The work required Mr. Smith to stand for long periods with his head bent forward while wearing a welding helmet. Mr. Smith is 60 years old. Mr. Smith last performed work for the employer on August 28, 2017. At that time, Mr. Smith commenced an approved leave of absence.

In March 2017, Mr. Smith consulted with a chiropractor regarding long-term neck pain and headaches. At that time, the chiropractor took x-rays and diagnosed cervical subluxation (neck spine misalignment), cervicgia (neck pain toward the rear and/or side of the vertebrae), headache, and cervical degenerative disc disease. The chiropractor recommended that Mr. Smith return for spinal adjustment and traction (stretching) three times per week for four weeks. Mr. Smith declined further chiropractic treatment at that time and attempted to resolve his neck pain and headaches on his own over the course of the next several months through home traction. On August 25, 2017, Mr. Smith returned to the chiropractor. Mr. Smith's cervical spine issues had worsened since the March appointment.

On September 1, 2017, Mr. Smith returned to the chiropractor. The chiropractor ordered x-rays and noted osteoarthritis, degenerative disc disease and joint disease. The chiropractor noted a kyphotic (backward) buckle in Mr. Smith's cervical spine. The chiropractor noted moderate and severe degenerative disc disease. The chiropractor advised Mr. Smith to discontinue his self-treatment and to return three times per week for four weeks to undergo spinal adjustment and traction. Mr. Smith elected to follow the chiropractor's recommendations.

On September 1, 2017, the chiropractor completed a Certification of Health Care Provider for Employee's Serious Health Condition in support of Mr. Smith's request for leave under the Family and Medical Leave Act (FMLA). The chiropractor indicated that Mr. Smith was unable to lift, carry, push, pull, twist, turn, or wear a helmet. The chiropractor stated:

Mr. Smith has a Kyphotic Buckle, aka a reverse kink in his neck which is putting strain and tension on his neck and head. In March 15th his x-ray showed 37 mm forward head and -40 vs normal +8.2 relative rotation angle @ C5/6 Re-xray Sept 01 showed worsening = 41mm too far forward and $-5/+8.2 = 13.2$ [degrees] off @ C5/6.

Later in the certification, the chiropractor indicated that Mr. Smith was incapacitated effective August 29, 2017 and that the determination would be revisited on October 23, 2017 in connection with new x-rays.

Later in the certification, the chiropractor stated: "Due to head posture he is unable to tolerate gravitational forces without cervicogenic tension headache."

On September 10, 2017, the chiropractor completed a form in support of Mr. Smith's request for short-term disability benefits through the employer's third-party provider, Unum. The chiropractor wrote:

Due to degenerative disc disease of the cervical spine and cervico-genic tension headaches he is having daily incapacitating headaches. X-rays done in March and September show rapid worsening of his condition. Forward head was 37mm Now 41mm, Kyphotic Buckle was -4 [degrees] out of +8.2 now -5 [degrees]/+8.2.

On October 18, 2017, the chiropractor completed a form indicating that Mr. Smith was unable to return to work at that time.

On November 15, 2017, Ms. Smith returned to the chiropractor for follow-up evaluation. The chiropractor again ordered x-rays and again noted osteoarthritis and degenerative disc and joint disease. However, the chiropractor noted improvement in the cervical spine curvature including disappearance of the "kyphotic buckle" and that Mr. Smith was no longer "oil canning," that is, no longer leaning his head forward and to one side in response to pain in his cervical spine. The chiropractor kept the same diagnoses. The chiropractor set forth Mr. Smith's "Management Plan" as follows:

Fred had prior relapse when I was unable to see him for 5 days. While it is very encouraging to see he has stopped "oil canning" with the kink in his neck, I would advise we continue with care as his RRA [relative rotation angle] is +2 degree, while we want to see 8 degrees. Spinal adjustment and mechanical traction 3x per week for a duration of 4 weeks. While I think he could possibly return to work part time with restrictions, I am certain he would relapse in very short order. I will present a report of findings at his next appointment.

On December 5, 2017, the chiropractor completed a form in support of Mr. Smith's short-term disability claim. The chiropractor wrote that Mr. Smith should avoid the following: "Prolonged neck strain, look @ bright lights. Sudden or forceful neck motions. No resistance neck motions." The chiropractor added: "Prolonged neck flexion or end range of motion especially with welding helmet."

On January 29, 2018, the chiropractor completed a form indicating that Mr. Smith was unable to perform "medium work." The chiropractor stated as follows: "His Kyphotic Buckle @ C5/6 is not stable. 15 min. of cutting veggies caused relapse. His eval on 12-18-17 indicated his ability to return to work, but not with welding helmet."

Mr. Smith continued on an approved leave of absence until February 20, 2018. In November 2017, Mr. Smith had exhausted his available leave under the Family and Medical Leave Act (FMLA). In December 2017, the employer approved an additional medical leave of absence to expire on February 20, 2018, but conditioned the leave on Mr. Smith making monthly contact with the employer and providing updated medical documentation. That contact was to occur, and the medical documentation was to be provided, at the start of each month. The employer did not receive any medical documentation or contact from Mr. Smith after December 7, 2017. However, Mr. Smith's chiropractor continued to provide Unum with updates in support of the short-term disability claim.

On February 28, 2018, Teresa Fitzgerald sent the following letter to Mr. Smith:

On December 7, 2017 Featherlite Inc. received your completed Extended Leave of Absence (ELOA) paperwork. Upon review of the paperwork we granted you ELOA leave. In the ELOA paperwork we mailed to you on December 4, 2017 it stated that the first of every month you are required to contact me and report your status and intent to return to work along with a written report from your treating physician. The last report Featherlite Received was on December 7, 2017.

In order for you to stay eligible for ELOA, please provide a written report from your treating physician regarding your condition, continued need for leave, and any restrictions that may apply. Please provide this documentation no later than March 12, 2018. Upon receipt of this documentation the company will evaluate whether a continuation of your ELOA is warranted.

If Featherlite does not receive the above requested documentation from you by March 12, 2018, Featherlite will assume you have abandoned your position, and your employment with the company will be terminated. You will then need to contact our office to arrange a time to pick up any personal items you may have left here.

Any questions please contact me at the number listed below.

Mr. Smith received the employer's letter on March 2, 2018, but did not take any action in response to the letter. When the employer had not received a response by March 12, 2018, the employer documented that Mr. Smith had separated from the employment. Mr. Smith did not respond, in part, because he did not think the employer had other work that he could perform with his restrictions. However, the employer was willing to explore whether Mr. Smith might be able to perform less physically taxing welding work or other work duties.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)d 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. 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.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. Mr. Smith had bonafide ongoing medical concerns related to his back and his long-term employment as a welder. The employer remained open to exploring work options and reasonable accommodations that might allow Mr. Smith to continue in the employment. Mr. Smith's failure to take reasonable steps to remain in contact with the employer, and failure to respond to the February 28, 2018 letter, precluded that conversation from moving forward. Mr. Smith decided on his own that there was no point in making further contact with the employer.

Because the evidence establishes a voluntarily quit the employment without good cause attributable to the employer, Mr. Smith is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Smith must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The May 23, 2018, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective March 12, 2018. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs