

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT A LEE
Claimant

APPEAL NO. 19A-UI-05516-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 07/01/18
Claimant: Appellant (2)

Iowa Code Section 96.5(1) - Layoff
Iowa Administrative Code rule 871-24.1(113) – Layoff

STATEMENT OF THE CASE:

Robert Lee filed a timely appeal from the July 8, 2019, reference 11, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Lee had voluntarily quit on June 2, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on August 5, 2019. Mr. Lee participated personally and was represented by attorney Randall Schueller. Mai Lor represented the employer and presented testimony through BreAnna Hart. The hearing in this matter was consolidated with the hearing in Appeal Numbers 19A-UI-05514-JTT and 19A-UI-05515-JTT. Exhibits 1, 2 and 3 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBIN (database readout for 07/01/18 benefit year) and KCCO (continued claims).

ISSUE:

Whether the claimant was discharged for misconduct, voluntarily quit for good cause attributable to the employer, or was laid off.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: QPS Employment Group, Inc. is a temporary employment agency. QPS provides workers to Titan Tire and maintains a QPS on-site supervisor, Jason Sheldahl, at Titan Tire. Robert Lee commenced his employment with QPS in November 2017 and immediately began a full-time, long-term assignment at Titan Tire. The work at Titan Tire involved sorting tires by hand. On or about November 1, 2018, Mr. Lee suffered a back injury in the course of performing his work duties. Mr. Lee promptly reported the injury and the injury gave rise to a worker's compensation claim. The employer arranged for Mr. Lee to be evaluated by a medical provider. On November 2, 2018, the medical provider selected by the employer released Mr. Lee to perform light-duty work. Effective November 19, 2018, the medical provider released Mr. Lee to return to his regular duties at Titan Tire and Mr. Lee returned to his tire sorting duties at Titan Tire. Mr. Lee continued to experience back pain in the course of performing his duties at Titan Tire. Mr. Lee last performed work in the Titan Tire assignment on January 3, 2019.

On January 3, 2019, the employer or its worker's compensation carrier arranged for Mr. Lee to be re-evaluated by a medical provider. The medical provider released Mr. Lee to perform light-duty work. The medical provider restricted Mr. Lee from repetitive bending and twisting and from lifting more than 20 pounds. The medical provider indicated that Mr. Lee would need to be allowed to get and move around every 30 minutes as needed. Based on those medical restrictions, QPS did not return Mr. Lee to the Titan Tire assignment. Instead, QPS immediately placed Mr. Lee in a light-duty assignment at the QPS office in Des Moines. The light-duty assignment at the QPS office continued until May 10, 2019. Throughout that time, Mr. Lee's medical work restrictions remained unchanged.

Effective, May 10, 2019, QPS elected to no longer provide the light-duty assignment. QPS notified Mr. Lee that he would need to go completely off work and commence receiving worker's compensation benefits for temporary total disability (TTD). The first TTD check for weekly TTD benefits of \$327.12 was disbursed on May 23, 2019 for the week of Monday, May 20, 2019 through Sunday, May 26, 2019.

Effective June 5, 2019, the medical provider released Mr. Lee to return to work without restrictions. The employer received that information the same day, but did not contact Mr. Lee to recall him to the QPS employment or to the Titan Tire assignment. On June 7, 2019, Mr. Lee telephoned Mr. Sheldahl's number. However, when Mr. Sheldahl did not answer, Mr. Lee did not leave a voicemail message. There was no further contact between QPS and Mr. Lee outside of unemployment insurance proceedings. Mr. Lee established an "additional claim" for unemployment insurance benefits that Iowa Workforce Development deemed effective June 2, 2019. The additional claim was based on a July 1, 2018 original claim date.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 Iowa Administrative Code rule 871-24.25.

The weight of the evidence in the record establishes that the employer laid off Mr. Lee effective May 10, 2019. The employer elected to layoff Mr. Lee rather than continue to provide reasonable accommodations of his work-related medical restrictions. An employer has an obligation to provide an employee with reasonable accommodations that enable the employee to continue in the employment. See *Sierra v. Employment Appeal Board*, 508 N.W. 2d 719 (Iowa 1993). Subsequent to the May 10, 2019, the employer elected not to recall Mr. Lee to the employment, even after the employer learned on June 5, 2019 that Mr. Lee had been released to return to work without restrictions. The employer's assertion that Mr. Lee voluntarily quit an assignment or the employment is without merit. At no time did Mr. Lee communicate through word or deed an intention to voluntarily separate from the employment. The circumstances of Mr. Lee's May 10, 2019 involuntary separation from the employment are not governed by Iowa Code section 96.5(1)(j) pertaining to voluntary quits from temporary employment. The employer's election not to recall Mr. Lee from the layoff, and the lack of contact between the parties following the June 5, 2019 release to return to work without restrictions, did not transform the involuntary separation into a voluntary quit. Mr. Lee is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The July 8, 2019, reference 11, decision, is reversed. The claimant was laid off effective May 10, 2019. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn