

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM G KURYLO
Claimant

APPEAL NO. 17A-UI-00233-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCED PEST SOLUTIONS INC
Employer

OC: 08/14/16
Claimant: Appellant (5)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Adam Kurylo filed a timely appeal from the January 9, 2017, reference 02, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Kurylo had voluntarily quit on December 9, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 30, 2017. Mr. Kurylo participated. Tim Sullivan represented the employer. Exhibits 1, 2 and A through D were received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO and KCCO. With the agreement of the parties, the administrative law judge took official notice of the information concerning Type I diabetes published at www.mayoclinic.org.

The administrative law judge notes that an administrative law judge has entered decisions in Appeal Numbers 17A-UI-00455-DL-T and 17A-UI-00456-DL-T that grants Mr. Kurylo's request to backdate the effective date of his additional claim to December 11, 2016.

ISSUES:

Whether Mr. Kurylo's voluntary quit was for good cause attributable to the employer.

Whether the employer's account may be charged for benefits.

Whether Mr. Kurylo has been able to work and available for work within the meaning of the law since he established the additional claim for benefits that was effective December 18, 2016.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tim Sullivan owns and operates Advanced Pest Solutions, Inc. The company provides general insect and rodent control services to commercial and residential customers in the Quad-Cities area. The work of the pest control tech is physically demanding. The work involves crouching and bending. The work involves wearing a backpack sprayer that can hold up to four gallons of liquid. While the company prefers to work in controlled temperature environments, the pest

control work often involves working in hot, unconditioned spaces. The company's services include bed bug extermination. That work requires that the pest control tech wear a Tyvek suit that retains body heat and that makes working in hot environments even more uncomfortable.

Adam Kurylo was employed by Advanced Pest Solutions, Inc. as a full-time pest control tech. Mr. Kurylo began the employment on August 22, 2016. His work hours were roughly 8:00 a.m. to 5:00 p.m., Monday through Friday. Mr. Kurylo trained with another pest control tech for the first month of the employment. On November 13, 2016, Mr. Kurylo gave notice to the employer that he would be quitting the employment on December 9, 2016, due to health issues. The employer elected to have November 28, 2016 be the last day that Mr. Kurylo performed work, but paid Kurylo for the remainder of his notice period.

Mr. Kurylo had several health issues during the period of employment. In 2012, Mr. Kurylo had been diagnosed with degenerative disc disease. In 2015, Mr. Kurylo was diagnosed with Type II diabetes. Mr. Kurylo reports that he also suffers from attention deficit hyperactivity disorder and an anxiety disorder. Mr. Kurylo disclosed his Type II diabetes to the employer at the time of hire, but did not disclose his degenerative disc disease. In connection with the hiring process, Mr. Sullivan described to Mr. Kurylo the physically demanding aspects of the employment. Mr. Sullivan also told Mr. Kurylo that he was not obligated to use the full capacity of the four-gallon backpack sprayer. Mr. Kurylo elected to accept the employment despite being apprised of the physical demands that went with the job. Mr. Kurylo thought the physical demands of the job would be helpful in controlling his Type II diabetes. Within a week of beginning the employment, Mr. Kurylo was diagnosed with Type I diabetes and diabetic neuropathy. Mr. Kurylo is insulin-dependent. At the same time Mr. Kurylo was diagnosed with Type I diabetes, he was also diagnosed with irritable bowel syndrome. The diabetes-related symptoms include increased sensitivity to heat and cold. When Mr. Kurylo got hot in the course of performing his duties for Advanced Pest Solutions, especially when he was working in the Tyvek suit, his blood sugar would drop. Mr. Kurylo would usually need to wear the Tyvek suit for one to two and a half hours per day. At those times it would be necessary for Mr. Kurylo to take a break from the work so that he could go sit in the employer's air conditioned truck and consume sugar tablets or soda to bring his blood sugar back up. A nurse practitioner who treats Mr. Kurylo's diabetes describes these drops in blood sugar as potentially life-threatening. Though Mr. Kurylo did not provide the employer with any medical documentation to support his need for work accommodation, Mr. Sullivan accommodated Mr. Kurylo's request for additional breaks. Mr. Kurylo asked for additional time between service calls in case his blood sugar dropped while enroute. Mr. Sullivan accommodated this request to the extent possible in light of customer appointments. Mr. Sullivan accommodated Mr. Kurylo's request to do less work that involved wearing the Tyvek suit, but did not eliminate such work. Mr. Sullivan offered to reduce the number of work hours, but Mr. Kurylo declined that offer. Prior to giving his quit notice, Mr. Kurylo advised the employer that his doctor supported the idea of him not continuing in the employment. Mr. Sullivan did not provide the employer with medical documentation indicating that a doctor advised him to leave the employment.

Though Mr. Sullivan did not provide the employer with medical documentation, he has presented a medical note for the appeal hearing. The note is dated January 19, 2017 and is from Brenda Borkgren, A.R.N.P. of UnityPoint Clinic Multispecialty Rock Island. The note states, in relevant part, as follows:

It is my medical opinion that Adam G Kurylo has several diagnoses which prevent him from performing his job functions. These diagnoses include type 1 diabetes and diabetic neuropathy which have lead [sic] to a sensitivity to heat and cold. When this patient gets warm his blood sugar tends to drop which can possibly be life threatening.

Adam is a relatively new diabetic so he is still learning how to give insulin as well as adjust it appropriately.

After several lows while driving the company work vehicle, while performing in hot weather, and working in the Tyvek suits, it was no longer safe for him to perform the duties of his position.

Mr. Kurylo established an original claim for unemployment insurance benefits that was effective August 14, 2016. After Mr. Kurylo separated from Advanced Pest Solutions, he established an additional claim for benefits that was effective December 18, 2016. Mr. Kurylo's base period for purposes of the claim year that started August 14, 2016 consists of the second, third and fourth quarters of 2015 and the first quarter of 2016. Advanced Pest Solutions is not a base period employment for purposes of that claim year. Accordingly, Advanced Pest Solutions has not been charged, and would not be charged, for benefits paid to Mr. Kurylo during the claim year that runs August 14, 2016 through August 12, 2017.

Since Mr. Kurylo established the additional claim for benefits that was deemed effective December 18, 2016, he has made weekly claims and has made two or more job contacts per week as part of his search for new employment. Mr. Kurylo's medical restrictions include a 10-pound lifting restriction based on the degenerative disc disease diagnosis.

In an appeal separate from the present matter, an administrative law judge has granted Mr. Kurylo's request to backdate his additional claim for benefits to December 11, 2016. See Appeal Numbers 17A-UI-00455-DL-T and 17A-UI-00456-DL-T.

REASONING AND CONCLUSIONS OF LAW:

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.

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 that was without good cause attributable to the employer. The evidence in the record establishes that Mr. Kurylo had non-work related illnesses that were aggravated by the work and that necessitated reasonable accommodations so that Mr. Kurylo could continue in the employment. The employer was willing to provide reasonable accommodations so that Mr. Kurylo could continue in the employment. Mr. Kurylo did not present the employer with any medical documentation setting forth the reasonable accommodations he would need in order to continue in the employment. Mr. Kurylo did not warn the employer that he would quit the employment if not provided with such reasonable accommodations. The note from the nurse practitioner suggests that some of the problems Mr. Kurylo experienced in the employment were attributable to his status as a newly diagnosed insulin-dependent diabetic who was still learning how to self-administer the appropriate dosage of insulin. Mr. Kurylo did not present the employer with medical documentation indicating that a doctor was advising him to leave the employment. Mr. Kurylo has not presented medical documentation indicating that he has recovered sufficiently to be released to return to the employment. Mr. Kurylo has not returned to the employer to offer his services.

Because the administrative law judge concludes that Mr. Kurylo's voluntarily quit was without good cause attributable to the employer, Mr. Kurylo 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. Kurylo must meet all other eligibility requirements. The employer's account shall not be charged for benefits paid to Mr. Kurylo.

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

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence establishes that Mr. Kurylo has been able to perform work since he established the additional claim for benefits. Mr. Kurylo's health conditions do not prevent him from performing many types of work that might be available in his local labor market, the Quad-Cities area. Mr. Kurylo's job search indicates that he has been available for work since he established the additional claim.

DECISION:

The January 9, 2017, reference 02, decision is modified to include adjudication of the able and available issues through January 30, 2017. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective December 9, 2016. The claimant is disqualified for benefits until he has worked in a 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. The claimant has been able to work and available for work since establishing the additional claim for benefits that has been deemed effective December 11, 2016.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs