

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GABRIEL CEJA
Claimant

A-LERT
Employer

APPEAL 19A-UI-07870-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/15/19
Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.5-1-c - Voluntary Quit for Care of Family Member
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Gabriel Ceja (claimant) appealed a representative's October 3, 2019 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with A-Lert (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 29, 2019. The claimant participated personally. The employer participated by Brenda Wooten, Employee Service Assistant, and John Jordan, Insulation Superintendent.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired for a second period of employment on January 28, 2019 as a full-time insulator. The employer assigned the claimant to work in Volga, South Dakota. On September 13, 2019, the superintendent informed the claimant and his co-workers that his job would be ending in South Dakota and the crew would be working in Renville, Minnesota, starting on September 16, 2019.

On September 13, 2019, the claimant told the superintendent that he needed some time off to go see his family in Charles City, Iowa. The claimant remembers asking for three weeks off. On September 15, 2019, the claimant received word that his wife's son in Mexico was very ill. He immediately left for Mexico and began caring for his stepson. The claimant did not tell the employer about his situation. The claimant has not returned from Mexico. He cannot work at this time because he is taking care of his stepson who is ill. Continued work was available had the claimant not resigned.

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)c 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

Iowa Admin. Code r. 871-24.26(8) 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:

(8) The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or by marriage.

The claimant left work to take care of his stepson who was ill. The claimant's stepson has not sufficiently recovered and the claimant has not returned to and offered his services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

The next issue is whether the claimant is able and available for work. For the following reasons the administrative law judge concludes he was not.

Iowa Admin. Code r. 871-24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

When an employee requests and is granted a leave of absence he is considered to be unavailable for work. The claimant took time away from work to care for his stepson. He is

considered to be unavailable for work as of September 13, 2019. The claimant is disqualified from receiving unemployment insurance benefits due to his unavailability for work.

DECISION:

The representative's October 3, 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. He is also disqualified from receiving unemployment insurance benefits due to his unavailability for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn