

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL J MINTEER
Claimant

DECKER TRUCK LINE INC
Employer

APPEAL 17A-UI-05046-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/16/17
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)c – Voluntary Quitting – Care for Family Member

STATEMENT OF THE CASE:

The employer filed an appeal from the May 4, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 30, 2017. The claimant participated and testified. The employer participated through Director of Human Resources Courtney Bachel and Health and Benefits Manager Andrea Klobberdanz.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a truck driver from May 25, 2016, until this employment ended on February 1, 2017, when he voluntarily quit.

The last week of January 2017 claimant received a call that his wife had fallen on the ice and seriously injured her hip. The injury required claimant's wife to have hip replacement surgery. While she was injured claimant's wife's mobility was severely limited. Claimant needed to be at home during this time to help care for his wife and the couple's minor children. Claimant spoke to the employer about leave, but no leave was available. Claimant then resigned and was told to reapply when his wife was healed. By April 17, 2017, claimant's wife was able to move around enough to care for herself and their children and claimant reapplied for work with the employer. That same day claimant was informed by the employer that he would not be rehired.

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 16, 2017. The claimant has not received any unemployment insurance benefits to date. Both the employer and the claimant participated in a fact finding interview regarding the separation on May 3, 2017. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged from employment but voluntarily quit. However, he is not disqualified from benefits as he quit to take care of an immediate family member who was injured and immediately returned to offer services to the employer but no work was available to him. Benefits are allowed.

Iowa Code section 96.5(1) 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.

Iowa Admin. Code r. 871-24.25 provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

Iowa Code § 96.5(1)c 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:

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:

This separation is not considered to be a voluntary quit.

(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 marriage.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. However, an employee shall not be disqualified from benefits if he or she voluntarily quit to care for an ill or injured immediate family member and, once the family member recovered, returned to the employer to offer work. Iowa Code § 96.5(1)c.

Both parties agree the claimant voluntarily left his employment. However, the claimant is still qualified for benefits. The claimant voluntarily quit because his wife, an immediate family member, suffered a serious injury and was unable to care for herself or the couple's minor children. After claimant's wife had recovered sufficiently enough to become mobile again, the claimant immediately filled out an application with the employer. Claimant was notified the same day that he was not eligible for rehiring. As claimant offered his services immediately upon his family member recovering, but no work was available, benefits are allowed. The issues of overpayment and participation are moot.

DECISION:

The May 4, 2017, reference 02, unemployment insurance decision is affirmed. The claimant voluntarily left his employment to care for an immediate family member who was injured and, upon her recovery, immediately returned to the employer to offer services but work was not available. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs