

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUNNY M RAILEY
Claimant

APPEAL NO. 17A-UI-00844-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 12/18/16
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Sunny Railey filed a timely appeal from the January 18, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Mr. Railey had voluntarily quit on December 1, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on February 14, 2017. Mr. Railey participated. Jim Funcheon, Division Human Resources Manager, represented the employer. Exhibits 1 through 5 were received into evidence.

ISSUE:

Whether Mr. Railey separated from the employment for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sunny Railey began his full-time employment with Bridgestone Americas Tire in 2011 and last performed work for the employer on the morning of November 9, 2016. Short before that time, Mr. Railey had moved from a second shift position to an overnight inspector position. Mr. Railey's work hours in the overnight position were 10:00 p.m. to 6:00 a.m. Mr. Railey's work week in the overnight position began on Sunday evening and ended on Friday morning.

In February 2016, Mr. Railey applied for a leave of absence for the period of November 1, 2016 through November 30, 2016. Mr. Railey requested the leave of absence so that he could travel to his native country, Liberia, for a family visit. The employer approved the leave of absence. The agreed up on return to work date was December 1, 2016. That meant that Mr. Railey was supposed to report for work at 10:00 p.m. on November 30, 2016 to work the shift that would at 6:00 a.m. on December 1, 2016. Because the bulk of the work hours fell on December 1, the employer designed the shift as a December 1 shift.

Mr. Railey did not begin his leave of absence on November 1, 2016. When Mr. Railey moved to the overnight position he gained a new supervisor. The new supervisor was unaware of the approved leave of absence. Mr. Railey continued to report for work through the morning of

November 9, 2016. Mr. Railey then commenced his leave of absence. Before Mr. Railey did not ask the employer to amend his return to work date. On November 10, 2016, Mr. Railey flew to Liberia to visit his family.

Mr. Railey did not leave Liberia in time to return to work by the agreed up return to work date. Instead, Mr. Railey decided on his own to extend the period of leave beyond the return to work date. The employer began to document Mr. Railey as a no-call/no-show for his scheduled shifts. Under the collective bargaining agreement that governed Mr. Railey's employment, an employee who missed seven calendar days without notifying the employer was deemed to have voluntarily quit the employment unless the employee was able to present "satisfactory evidence that his failure to report was due to circumstances beyond his control." The attendance policy in the collective bargaining agreement required that Mr. Railey notify the company prior to the scheduled start of his shift if he needed to be absent. The employer had reviewed the attendance policy with Mr. Railey at the start of his employment.

On December 7, 2016, several days after Mr. Railey was due back at work, Mr. Railey's father fell ill. Mr. Railey's took his father to the hospital. At that point, Mr. Railey attempted to make an international call to the employer, but did not succeed in making the international call. Mr. Railey's father was discharged from the hospital on December 9, 2016. Mr. Railey returned to Iowa on Saturday, December 10, 2016.

When Mr. Railey had not returned to work by the morning of December 12, 2016, the employer concluded that Mr. Railey had voluntarily quit by failing to report for work for seven days. The employer mailed a letter by certified mail to Mr. Railey's Altoona address indicating that the employer deemed the employment terminated effective December 12, 2016. By the time the employer sent the letter to Mr. Railey, Mr. Railey had been absent for shifts that would have ended on December 1, 2, 5, 6, 7, 8, 9 and 12 without notice to the employer. The employer did not hear from Mr. Railey until after the employer had mailed the December 12 letter. Mr. Railey attempted to report to work on the evening of December 12. The employer had already deactivated his badge. Mr. Railey was unable to enter the production plant. The guard shack personnel told Mr. Railey that the employer had documented a quit from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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. 871-24.22(2)j(1), (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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Iowa Admin. Code r. 871-24.25(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:

(25) The claimant left to take a vacation.

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 weight of the evidence establishes that Mr. Railey elected to extend his vacation and did not return to work at the agreed upon return to work date. Mr. Railey subsequently assisted with obtaining medical treatment for his father. But that issue arose several days after Mr. Railey was supposed to return to work. By that point, Mr. Railey had already been a no-call/no-show for five shifts. Mr. Railey's failure to return to work as agreed at that end of the approved leave of absence constituted a voluntary quit without good cause attributable to the employer. Accordingly, Mr. Railey 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. Railey must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The January 18, 2017, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective December 1, 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 for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs