

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRETT J CRAWFORD
Claimant

JELD-WEN INC
Employer

APPEAL NO. 23A-UI-07334-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/28/23
Claimant: Respondent (2)**

Iowa Code Section 96.5(1)(d) – Separation Due to Non-work-related Medical Condition

STATEMENT OF THE CASE:

On July 27, 2023, the employer filed a timely appeal from the July 19, 2023 (reference 02) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the claimant was discharged from the employment on June 4, 2023 for no disqualifying reason. After due notice was issued, a hearing was held on August 11, 2023. Brett Crawford (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Sharon Miller represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, and the July 10, 2023 able and available decision.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Brett Crawford (claimant) began his employment with JELD-WEN, Inc. in November 2021 and worked as a full-time general production laborer in Acro Assembly until February 24, 2023. The claimant was assigned to the first shift, with core work hours of 7:00 a.m. to 3:00 p.m., Monday through Friday. The employment required that the claimant be able to lift 25 pounds.

After the claimant worked on February 24, 2023, the claimant went off work pursuant to the advice of his medical provider and due to a non-work-related right shoulder injury. The claimant is right-handed.

On April 12, 2023, the medical provider released the claimant to return to work with restrictions. However, the medical restrictions included lifting no more than five pounds, no use of right arm above chest height, and the requirement that the claimant be allowed to change positions and rest. The restrictions prevented the claimant being able to perform the essential duties of the

employment. For this reason, the employer declined to permit the claimant to return to work with the restrictions the medical provider had put in place. The employer told the claimant the employer was unable to accommodate the medical restrictions.

The claimant continued periodic contact with the employer. Sharon Miller, Human Resources Coordinator, was the claimant's primary point of contact once the claimant went off work.

At some later point, the claimant provided the employer with updated medical documentation that indicated the claimant was unable to work between June 4, 2023 and July 24, 2023.

Effective July 25, 2023, the claimant's medical provider released the claimant to return to work with medical restrictions. However, the restrictions included no lifting greater than 10 pounds and no lifting the right arm above chest height. These medical restrictions were to be in place during the period of July 25, 2023 to August 25, 2023. The medical restrictions prevented the claimant from performing the essential duties of the employment. The employer declined to allow the claimant to return to work with the medical restrictions indicated by the medical provider. The employer told the claimant that he could not return to the employment until he had medical restrictions the employer could accommodate or until he had a full release to return to work.

The employer asserts the claimant has been on a leave of absence since he went off work in February 2023. Though the employer hopes the claimant will return to the employment on August 25, 2023, the employer does not know whether or to what extent the claimant's doctor will release the claimant to return to work or whether the claimant will at that point be able to perform the essential duties associated with his job. At the time the employer discussed the July 2023 medical restriction document with the claimant, the parties agreed to speak again on August 25, 2023.

The claimant established an original claim for unemployment insurance benefits that was effective May 28, 2023. The claimant has not received benefits in connection with the claim. On July 10, 2023, Iowa Workforce Development entered a reference 01 decision that denied benefits effective May 28, 2023, based on a deputy's determination the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. The reference 01 decision has not been appealed and remains in effect.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(d) 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:

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.

Iowa Administrative Code rule 817-24.26(6)(a) 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.

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 the claimant left the employment effective February 24 2023 pursuant to advice from a licensed and practicing physician and due to a non-work-related injury to his dominant shoulder. Since the claimant went off work, the claimant has not recovered and has not been released by his doctor to return to his previous duties. Since February 24, 2023, the claimant has essentially been off work for an indefinite period with periodic review of his medical condition. With each review, the claimant had continued to be incapable of performing the essential functions of the employment due to the non-work related medical condition. Given the indefinite duration of the claimant's absence from the employment, which is going on six months, it is reasonable to conclude there has been a separation initiated by the claimant without good cause attributable to the employer. Accordingly, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

Because the separation was pursuant to a non-work-related medical condition and was pursuant to advice of a licensed and practicing physician, the claimant may also requalify for benefits by following steps set forth in the above-referenced statute and administrative rule. If the claimant recovers, returns to the employer with medical certification of his recovery such that he is able to perform his previously duties, and if the employer then has no suitable, comparable work available, then the claimant will become eligible for benefits, provided the claimant is otherwise eligible, and the employer's account will become subject to charge.

DECISION:

The July 19, 2023 (reference 02) is REVERSED. The claimant left the employment effective February 24 2023 pursuant to advice from a licensed and practicing physician and due to a non-work-related injury to his dominant shoulder. The claimant has not recovered from his injury. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

Because the separation was pursuant to a non-work-related medical condition and was pursuant to advice of a licensed and practicing physician, the claimant may also requalify for benefits by following steps set forth in the above-referenced statute and administrative rule. If the claimant recovers, returns to the employer with medical certification of his recovery such that he is able to perform his previously duties, and if the employer then has no suitable, comparable work available, then the claimant will become eligible for benefits, provided the claimant is otherwise eligible, and the employer's account will become subject to charge.



James E. Timberland
Administrative Law Judge

August 14, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.