

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NYUON TEM
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 20A-UI-06590-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/01/20
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant Nyuon Tem filed an appeal from a June 17, 2020 (reference 01) unemployment insurance decision that denied benefits based upon him voluntarily quitting his employment with Swift Pork Company (“Swift”) on November 15, 2019. Notices of hearing were mailed to the parties’ last known addresses of record for a telephone hearing scheduled for July 24, 2020. Tem appeared and testified. Henry Bran appeared and testified on behalf of Swift. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

Tem commenced full-time employment as a general laborer with Swift on May 3, 2017. Holly Hickman was Tem’s immediate supervisor.

Tem injured his back while working for Swift. He received medical treatment. Tem’s physician imposed work restrictions and Tem performed light-duty work. When Tem was released to full-duty, he was unable to perform his regular job. Tem requested light-duty work. Swift did not provide him with light-duty work.

Tem’s last day of work was November 8, 2019. On November 20, 2019, Tem completed an exit interview with Vicky Cervantes in human resources. Tem documented he wanted to take time off due to his back pain – for health/medical reasons. Tem testified he quit due to his back pain from his work injury.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides an individual “shall be disqualified for benefits, regardless of the source of the individual’s wage credits . . . If the individual has left work voluntarily without good cause attributable to the individual’s employer, if so found by the department.

The Iowa Supreme Court has held a “voluntary quit” means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer.” *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires “an intention to terminate the employment relationship accompanied by an overt act carrying out the intent.” *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). “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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant’s departure from employment was voluntary. *Irving v. Emp’t Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016).

871 Iowa Administrative Code 24.25(36) 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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

24.25(36) The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

871 Iowa Administrative Code 24.26(6) also 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:

24.26(6) 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.

Tem testified he developed back pain following a work injury at Swift. Swift initially provided Tem with light-duty work. After he was released to full-duty Tem continued to have back pain. Tem requested light-duty work. Light-duty work was not available. Tem quit because he was experiencing back pain and he could not perform his job duties for Swift. I find Tem was compelled to leave his position with Swift due to his back condition that was caused by his employment with Swift. I find Tem quit with good cause attributable to his employer. Benefits are allowed.

DECISION:

The June 17, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed in favor of the claimant/appellant. Benefits are allowed, provided the claimant is otherwise eligible.



Heather L. Palmer
Administrative Law Judge
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July 31, 2020
Decision Dated and Mailed

hlp/sam