

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMUEL GARCIA

Claimant

APPEAL NO. 09A-UI-08959-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

OC: 05/17/09

Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

871 IAC 24.26(6)b – Employment Separation/Job Related Injury

Section 96.4-3 – Able and Available

Section 96.3-7 –Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated June 18, 2009, reference 01 that held the claimant voluntarily quit work with good cause attributable to the employer on May 8, 2009, and benefits are allowed. A hearing was held on July 10, 2009. The claimant participated. Rachel Watkinson, HR Associate, participated for the employer.

ISSUES:

The issue is whether the claimant voluntary quit with good cause attributable to the employer.

The issue is whether the claimant was able and available for work

The issue is whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked as a full-time production worker doing picnic boning/skinning for the employer beginning October 6, 2008. In April 2009 the claimant began to experience back pain while doing his job that he reported to his supervisor. The claimant requested that he be moved to a different job that was denied. The claimant bid on a different job, but he did not have the seniority to get it.

On or about May 5, the claimant sought medical treatment at a local hospital for his back pain. The claimant received a statement from a physician assistant that he was not to work today, tomorrow due to a back injury and he should be moved to a different area. The claimant presented the statement to his supervisor with the request that he be moved to a different job or light duty status until his condition improved. The request was denied. When the claimant perceived that the employer was not going to accommodate his back injury, he quit his job on May 8 and left employment.

The employer HR department classified the claimant's separation as a three day, no-call/no-show to work for May 11 thru May 14, job abandonment. The HR department did not consult with the claimant's supervisor about his separation from employment.

The claimant is making job searches for full-time work that he can perform.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

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.

The administrative law judge concludes that the claimant was compelled to leave employment due to a job-related injury that is considered an involuntary termination of employment and a good cause attributable to the employer effective May 8, 2009.

The claimant is allowed benefits due to his separation from employment based on a job-related back injury where the employer failed to make any accommodation to keep the claimant as an employee. The HR department did not contact the claimant's supervisor about the separation from employment, and the claimant offered credible testimony about his back injury that is corroborated by the doctor's statement.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

There is no health restriction on the claimant's employment, and he is to make adequate job searches for full-time employment.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since the claimant is allowed benefits, there is no overpayment.

DECISION:

The decision of the department representative dated June 18, 2009, reference 01, is affirmed. The claimant's separation from employment effective May 8, 2009, is considered a voluntary quit with good cause attributable to the employer. The claimant is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs