

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVE L GERMAN
Claimant

BERTCH CABINET MFG INC
Employer

APPEAL 19A-UI-01746-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/03/19
Claimant: Appellant (1)

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 21, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on March 28, 2019. Claimant participated. Employer participated through human resource director Mitzi Tann. Mike Shannon and Tracy Bertch observed. Employer's Exhibit 1 was received.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on December 10, 2018. Claimant last worked as a full-time parts sanding apprentice. Claimant was separated from employment on January 3, 2019, when he resigned.

Claimant has a history of back problems. In December 2018, claimant fell and hurt his back outside of work. Claimant has not worked since he was injured. Claimant's medical provider informed him that he would need to undergo surgery and recover before he could return to work. Claimant discussed this with employer on January 3, 2019. Employer informed claimant he could resign for medical reasons and reapply for employment when he was released to return to work. Claimant opted to do so.

As of the date of the hearing, claimant has not been released to return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code section 96.5(1) 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.

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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

In this case, claimant resigned due to a non-work related medical condition. While claimant's medical provider did not advise him to resign, it is clear he was unable to work due to his medical condition. Claimant has not been released to return to work and has not returned to employer and offered to perform services. Therefore, claimant has not established he resigned for a good cause reason attributable to employer.

DECISION:

The February 21, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/scn