

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTOPHER I MITCHELL
Claimant

**VERMEER MANUFACTURING COMPANY
INC**
Employer

APPEAL NO. 22A-UI-04356-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (1R)

Iowa Code Section 96.5(1)(d) – Voluntary Quit

STATEMENT OF THE CASE:

On February 10, 2022, Christopher Mitchell (claimant) filed a timely appeal from the February 8, 2022 (reference 01, o.c. 04/19/20) decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on November 2, 2020 due to a non-work related illness or injury. After due notice was issued, a hearing was held on March 21, 2022. Claimant participated. Nick Rohner represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-04357-JT-T. Exhibits 1, 2, and A through D were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, DBIN, WAGE-A, NMRO, the PUA application, the PUA decision Claim Detail, the reference 01 (o.c. 04/19/20) decision, and the reference 01 (o.c. 04/25/21) 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: The claimant, Christopher Mitchell, was employed by Vermeer Manufacturing Company, Inc. as a full-time material handler. The claimant began the employment in January 2018 and last performed work for the employer on April 16, 2020. At that time, the claimant began an approved absence in connection with the claimant's doctor's determination that the claimant was at increased risk in connection with COVID-19 pandemic, due to the claimant's underlying diabetes, heart disease and hypertension. Before the claimant went off work, the employer had implemented a COVID-19 screening protocol that included taking employee temperatures and socially distancing when possible. The nature of the claimant's position required the claimant to move about the plant and sometimes brought the claimant into close proximity to coworkers.

At the time the claimant went off work, the employer was authorizing precautionary absences for those employees at increased risk in connection with the COVID-19 pandemic and those

employees who were concerned about their risk. To avoid negative consequences to absent employees' health insurance coverage, the employer did not call the precautionary absences a leave of absence. However, the claimant's time off was essentially a leave absence that was extended multiple times by agreement of the parties.

Between April 17, 2020 and the end of October 2020, the claimant called in daily absences, spoke periodically with a human resources representative to provide updates, and periodically provided notes from his doctor. The notes from the physician indicated the claimant's increased risk regarding COVID-19 and indicated the claimant was self-isolating. The employer used the period discussions with the claimant to discuss whether the claimant and his doctor were ready for the claimant to return to the employment. The claimant was never released by a doctor to return to the employment.

On October 26, 2020, the employer sent a letter to the claimant by certified mail. The claimant did not receive the letter. On or about October 26, 2020, the employer also spoke with the claimant by telephone regarding the same information set forth in the letter. The employer had by that time discontinued authorization of precautionary absences and was notifying employees of the employer's expectation employees would return to work. During the conversation with the claimant, the employer told the claimant the employer expected the claimant to return to work on or before November 2, 2020 or the employer would deem the claimant to have voluntarily quit the employment. The employer's written work rules included a provision that deemed an employee to have voluntarily quit if an employee failed to return to work at the end of an excused absence or administrative leave. The policy was included in the handbook the employer provided the claimant at the start of the employment. In May 2020, the employer had the claimant electronically acknowledge the newest version of the handbook, which also included the voluntary quit policy.

The claimant did not return to work by the November 2, 2020 deadline or at any point thereafter. The claimant's health care coverage ended effective November 30, 2020. The claimant obtained a November 23, 2020 medical note. Like the earlier notes, the November 23 note stated the claimant was at increased risk in connection with COVID-19 due to health issues and that the claimant was self-isolating at home. The claimant discontinued seeing the doctor when his healthcare insurance expired. A doctor never released the claimant to return to the employment and the claimant did not return to the employer to offer his services.

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) 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.

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.

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.

Iowa Admin. Code r. 871-24.22(2)(j) provides:

Benefit 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.

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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The evidence in the record establishes a November 2, 2020 voluntary quit without good cause attributable to the employer. After agreements to repeatedly extend the claimant's approved leave, the employer declined to extend the leave beyond November 1, 2020. The claimant elected not to return at that time due to his non-work related health issues and upon the advice of his doctor. The claimant never recovered within the meaning of the law and never returned to the employer to offer his services. 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 will not be charged.

The claimant can also requalify for benefits by (1) recovering from his illness to the point where the claimant is able to perform his previous regular duties, (2) having his recovery certified by a physician, and (3) returning to the employer to offer his services. If at that point the employer does not allow the claimant to return to the employment, the separation would become for good cause attributable to the employer and the employer's account would become subject to charge.

DECISION:

The February 8, 2022 (reference 01, o.c. 04/19/20) decision is AFFIRMED. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective November 2, 2020. The claimant is disqualified for benefits until he has worked in a nd 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 will not be charged.

The claimant can also requalify for benefits by (1) recovering from his illness to the point where the claimant is able to perform his previous regular duties, (2) having his recovery certified by a physician, and (3) returning to the employer to offer his services. If at that point the employer does not allow the claimant to return to the employment, the separation would become for good cause attributable to the employer and the employer's account would become subject to charge.

REMAND:

This matter is REMANDED for a determination of whether the claimant has been able to work and available for work within the meaning of the law since the April 19, 2020 original claim date. This matter is REMANDED for a determination of whether the claimant's PUA eligibility may be extended to the period prior to December 20, 2020 and after February 6, 2021.



James E. Timberland
Administrative Law Judge

March 30, 2022
Decision Dated and Mailed

jet/jh