IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARK W QUAGLIANO
Claimant

DEERY BROTHERS INC
Employer

APPEAL NO. 12A-UI-07283-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/03/12
Claimant: Appellant (5)

Section 96.6(4) – Previously Adjudicated Issue
Section 96.5(1)(d) – Voluntary Quit

STATEMENT OF THE CASE:

Mark Quagliano filed an appeal from the June 13, 2012, reference 03, decision that denied benefits based on an agency conclusion that his separation from the employer had been adjudicated as part of an earlier claim for benefits. After due notice was issued, a hearing was started on July 12, 2012 and concluded on July 18, 2012. Mr. Quagliano participated. Stephanie Van Dellen of Employers Unity represented the employer and presented testimony through Jerry Zick and Terry Mertins. The hearing in this matter was consolidated with the hearing in Appeal Number 12A-UI-07282-JTT. The parties waived any defect in notice concerning that the present case. Exhibits A through P and Department Exhibits D-1 through D-4 were received into evidence.

ISSUES:

Whether Mr. Quagliano's separation from Deery Brothers, Inc. was previously adjudicated as part of a prior claim and whether the prior adjudication continues to bind the parties.

Whether Mr. Quagliano's voluntary quit was for good cause attributable to the employer. It was not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 4, 2012, Iowa Workforce Development mailed a copy of the June 4, 2012, reference 05, decision to Mark Quagliano's last known address of record. The decision denied benefits in connection with Mr. Quagliano's voluntary quit from Deery Brothers, Inc. The decision carried a June 14, 2012 deadline for filing an appeal. Mr. Quagliano did not receive a copy of the decision until one was provided to him on July 12, 2012 for use at the appeal hearing. On June 13, 2012, Iowa Workforce Development had mailed Mr. Quagliano a June 13, 2012, reference 03, decision that denied benefits in connection with a new claim year based on the prior adjudication of his separation from the employer. The June 13 decision carried a June 23, 2012 deadline for appeal. Mr. Quagliano received the June 13 decision on June 15. Mr. Quagliano filed an appeal from that decision on June 19, 2012, when he delivered a completed appeal form to the Burlington Workforce Development Center. The Appeals Section received the appeal by fax the same day. The administrative judge found Mr. Quagliano's appeal from the June 4, 2012, reference 05 decision (concerning the Jun 5, 2011 original claim) to be a timely appeal. See Appeal Number 12A-UI-07282-JTT.

Mr. Quagliano was employed by Deery Brothers, Inc., as a full-time sales professional from June 2011 until March 20, 2012, when he voluntarily quit due to hypertension.

On January 13, 2012, Mr. Quagliano had suffered a fractured rib in a fall at work. Mr. Quagliano received medical evaluation that day through the employer's workers' compensation medical provider and was released to return to sedentary work only with limited reaching above the shoulder, bending, stooping, twisting, sitting, standing, and walking. Mr. Quagliano was further restricted to wearing a rib brace at work and to remove the brace each evening. Mr. Quagliano was prescribed a pain medication for use as needed and was directed to ice the injury as needed.

On January 17, 2012, the medical provider modified the restrictions to include a 10-pound lifting restriction and limited reaching above the shoulder as tolerated. The medical provider also eliminated the sedentary work restriction. The reaching-above-the-shoulder restriction was relaxed to "as tolerated." The rest of the restrictions remained unchanged.

On January 24, 2012, the medical provider further modified the restrictions to include an eight-hour limit to Mr. Quagliano's work day. The medical provider directed Mr. Quagliano to ice his rib each evening and to take the pain medication each evening for sleep. The medical provider relaxed the bending, stooping, twisting, sitting, standing and walking restrictions to "as tolerated."

On February 7, 2012, the medical provider modified the medical restriction to reduce wearing of the rib belt to "as needed" and taking anti-inflammatory medication for pain. The rest of the restrictions remained unchanged.

On March 6, 2012, the medical provider modified the restrictions to increase the lifting restriction to 30 pounds. The medical provider eliminated the reaching-above-the-shoulder, bending, stooping, twisting, sitting, standing and walking restrictions. The medical provider eliminated the rib belt and use of anti-inflammatory medication. The medical provider continued the eight-hour limit on Mr. Quagliano's work day.

Mr. Quagliano last performed work for the employer on March 12, 2012. Mr. Quagliano started his shift at noon and left within an hour. Mr. Quagliano was then absent from work on March 13 through 19.

On March 14, 2012, Mr. Quagliano received medical evaluation and treatment at an emergency room for an episode of dizziness and weakness. Mr. Quagliano was diagnosed with hypertension that was poorly controlled. The medical notes from the visit do not include a blood pressure reading, but references a nurse's note that might contain that information. The medical notes from the visit indicate that indicate that Mr. Quagliano smokes tobacco.

After the episode of dizziness that prompted Mr. Quagliano to seek medical evaluation on March 14, Mr. Quagliano continued off work through March 19, 2012.

On March 16, Mr. Quagliano provided the employer with a medical document indicating that he had been seen for dizziness on March 14 and another note that said he had been released to return to work on March 16 with instructions to follow up with a doctor.

On March 19, 2012, Mr. Quagliano was seen at the University of Iowa Hospitals & Clinics. Mr. Quagliano has provided an incomplete document pertaining to the visit. The document contains pages numbered six through nine, but omits pages one through five. The document indicates that that Mr. Quagliano had not been appropriately managing his hypertension and states: "HTN - has been away for [from] the practice for some time. Has not been followed for quite some time. Has only been taking ACEI. Went to the local recently and given short course of Clonodine. Does not remember if the Coreg I placed him on last visit with me did anything." The document indicates that

at the time of the visit, Mr. Quagliano had a blood pressure measurement of 153/91 mmHg. The document indicates that Mr. Quagliano still smoked half a pack of cigarettes per day. The document also references that Mr. Quagliano is a colon cancer survivor. The document indicates that following diagnoses: unspecified essential hypertension, pain in joint, ankle and foot, malignant neoplasm of colon, unspecified site, and tobacco use disorder. Nothing in the document suggests that the treating physician recommended that Mr. Quagliano leave his employment as part of his treatment regimen.

Mr. Quagliano appeared at the workplace on March 20 to notify Terry Mertins, general manager, that he was resigning from the employment for health reasons. Mr. Quagliano did not provide the employer with any additional medical documentation to support his need to be off work on March 16 or beyond. Mr. Quagliano did not provide the employer with specifics concerning the medical condition that was prompting him to quit. Mr. Quagliano did not assert that he had been advised by a doctor to leave the employment and did not request additional accommodations. The employer continued to have work for Mr. Quagliano. Mr. Quagliano told the employer that he would like an opportunity to return to the employment in the future. Mr. Mertins told Mr. Quagliano that he had enjoyed working with him.

On March 23, 2012, Mr. Quagliano had a follow-up medical appointment concerning his January rib injury. At that time, Mr. Quagliano was released to return to work without restrictions. Mr. Quagliano did not return to the employer to offer his services.

In making the decision to leave the employment, Mr. Quagliano considered what he believed to be the employer's previous failure to accommodate the medical restrictions that followed the rib injury. The employer in fact did not expect Mr. Quagliano to exceed his medical restrictions. Prior to the injury, Mr. Quagliano had been expected to work Monday, Tuesday, and Friday 8:30 a.m. to 8:30 p.m. Prior to the injury, Mr. Quagliano had also been scheduled to work Wednesday noon to 8:30 and Saturday 8:30 a.m. to 6:00 p.m. Mr. Quagliano had Thursdays and Sundays off. Once the doctor imposed the eight-hour shift restriction, the employer adjusted Mr. Quagliano's hours to noon to 8:00 p.m. While Mr. Quagliano was under the eight-hour work restriction, the employer did not expect Mr. Quagliano to work beyond 8:00 p.m. and did not expect him to help with the lot closing duties at the end of the work day. Some of Mr. Quagliano's coworkers commented about Mr. Quagliano not helping with the closing duties and the comments made Mr. Quagliano uncomfortable.

The employer had made arrangements for Mr. Quagliano to participate in training to occur in Des Moines in February. The training would involve a three-hour trip to and from Des Moines in addition to several hours of actual training. The employer cleared the planned trip and training with the medical provider and the medical provider approved Mr. Quagliano's participation in the trip and training despite the eight-hour workday restriction. The doctor who approved this exception to the limited workday was a colleague of the doctor who generally followed Mr. Quagliano's care. The doctor who approved Mr. Quagliano's participation reviewed Mr. Quagliano's medical chart. After Mr. Quagliano told the employer he would participate in the training, and after the medical provider approved his participation, Mr. Quagliano advised the employer that he would not participate in the training. After Mr. Quagliano failed to appear for the training, the employer imposed a five-day suspension.

REASONING AND CONCLUSIONS OF LAW:

Unless appealed in a timely manner and reversed on appeal, a finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of Iowa Workforce Development, administrative law judge, or the employment appeal board, is binding upon the parties in proceedings brought under this chapter. See Iowa Code section 96.6(3) and (4).

In this case, Mr. Quagliano filed a timely appeal from the June 4, 2012, reference 05, decision (concerning the June 5, 2011 original claim date) and his appeal from that decision was heard at the same time as his appeal from the June 13, 2012, reference 03, decision (concerning the June 3, 2012 original claim date). Due the claimant's timely appeal from the June 4, 2012, reference 05 decision, that decision did not become a final agency decision and does not bind the parties. However, the present decision affirms the lower decisions that denied benefits.

Iowa Code section 96.5-1-d provides:

> An individual shall be disqualified for benefits:
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> 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:
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> 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.

Workforce Development rule 871 IAC 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.
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> 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.
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> 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.

The weight of the evidence in the record establishes that Mr. Quagliano voluntarily quit the employment due to hypertension. The evidence fails to establish that Mr. Quagliano's hypertension made it necessary for him to leave the employment or that staying in the employment would expose Mr. Quagliano to serious harm. The weight of the evidence fails to establish that Mr. Quagliano's hypertension was caused by or aggravated by the employment. Mr. Quagliano has presented no medical documentation to suggest a connection between the employment and his hypertension. The evidence indicates that Mr. Quagliano's decision to quit the employment due to a non-work related medical condition and was not based on the advice of a licensed and practicing physician. In order words, a doctor did not recommend that Mr. Quagliano leave the employment. Mr. Quagliano has not returned to the employer to offer his services after recovering from the hypertension.

Mr. Quagliano voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Quagliano is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Quagliano.

DECISION:

The Agency representative's June 13, 2012, reference 03, decision is modified as follows. In light of the claimant's timely appeal from the decision that denied benefits as part of an earlier claim year, the claimant was not precluded from further adjudication of his separation from Deery Brothers, Inc. as part of the appeal. The claimant voluntarily quit the employment on March 20, 2012 without good cause attributable to the employer. The lower decision misstated the separation date as April 14, 2012. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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