

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MIKE BRISBOIS
Claimant

DEN HARTOG INDUSTRIES INC
Employer

APPEAL 21A-UI-23168-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/05/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On October 19, 2021, the claimant filed an appeal from the October 8, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 9, 2021. Claimant Mike Brisbois participated and testified. Employer did not call the phone number listed on the Notice of Hearing and did not participate.

ISSUE:

Did the claimant quit the employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant began working for employer in February 2018. Claimant last worked as a full-time laborer. Claimant was separated from employment on May 12, 2020, when he was severely injured in a car accident and unable to return to work. The claimant has still not fully recovered from his injuries, and it is not certain if or when he will be able to return to work.

REASONING AND CONCLUSIONS OF LAW:

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)d 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. 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.

871 IAC 24.25(35) 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician.
- (b) Obtain certification of release for work from a licensed and practicing physician.
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

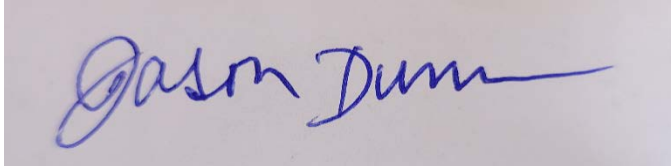
"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

The claimant's car accident has prevented him from continuing to work for the employer. He has not been released to return to work by his medical provider and it is questionable whether the claimant will ever be able to return to the labor market based on the extent of his injuries. Benefits are denied. If the claimant is medically cleared to return to work and offers his services to his

employer and there is no suitable work the claimant may be eligible for benefits at that time provided, he meets all other eligibility requirements.

DECISION:

The October 8, 2021, (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.



Jason Dunn
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January 18, 2022
Decision Dated and Mailed

jd/scn