

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KHODOR M AL MAJIDI
Claimant

APPEAL NO. 13A-UI-11856-JT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

TPI IOWA LLC
Employer

**OC: 09/22/13
Claimant: Appellant (2)**

Section 96.5(1)(c) – Voluntary Quit to Care for Sick Family Member

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the October 15, 2013, reference 01, decision that denied benefits. After due notice was issued, an in-person hearing was held on November 19, 2013. Claimant participated and presented additional testimony through Sima Yaqubi. The employer did not appear for the hearing. The employer submitted documents in lieu of participating, which documents were received into evidence as Exhibit One. Exhibit A was also received into evidence. Arabic-English interpreter Zahra Bouhouch assisted with the hearing.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is an Arabic speaking person with minimal English skills. The claimant is an immigrant from Iraq. The claimant was employed by TPI Iowa, L.L.C., as a full-time production worker from July 2012 until June 5, 2013, when he voluntarily quit the employment so that he could return to Iraq to care for his sick mother, who was then seriously ill without anyone to care for her. The claimant left Iraq prior to his mother's recovery and arrived back in Iowa on September 4, 2013. The claimant returned to the United States before his mother had recovered out of concern for his continued employment with TPI, Inc., L.L.C. Within a few days of this return, the claimant went to TPI, L.L.C., and offered his services. The claimant spoke with a receptionist who sent him away after advising the claimant the employer would call him. The employer never called the claimant to discuss his return to the employment. The claimant remained available to return to the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(c) and (e) provides as follows:

96.5 Causes for disqualification.

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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

e. The individual left employment upon the advice of a licensed and practicing physician, for the sole purpose of taking a member of the individual's family to a place having a different climate, during which time the individual shall be deemed unavailable for work, and notwithstanding during such absence the individual secures temporary employment, and returned to the individual's regular employer and offered the individual's services and the individual's regular work or comparable work was not available, provided the individual is otherwise eligible.

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 evidence in the record indicates that the claimant separated from the employment for the sole purpose of caring for his seriously ill mother. The claimant returned prior to his mother's full recovery out of concern for his continued employment. The claimant returned to the employer upon his return to Iowa and offered his services. A representative of the employer sent the claimant away with instructions that the employer would contact the claimant. The employer did not contact the claimant to facilitate his return to the employment and thereby communicated to the claimant that the employer did not have work available for the claimant.

In light of the employer's de facto refusal to return the claimant to the employment, the claimant's voluntary quit was for good cause attributable to the employer. Accordingly, the claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Agency representatives October 15, 2013, reference 01, decision is reversed. The claimant voluntarily quit the employment for the sole purpose of taking care of a family member. The claimant returned to the employer before the family member had recovered. The claimant requested to return to the workplace and offered his services, but was sent away with instructions that the employer would contact him. The employer did not contact the claimant and thereby did not allow the claimant to return to work. Based on the employer's failure to return the claimant to work, the claimant's separation from the employment was for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs