

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM MERCADO**  
Claimant

**APPEAL NO. 17A-UI-11096-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARY ANN'S SPECIALTY FOODS INC**  
Employer

**OC: 10/08/17**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

William Mercado filed a timely appeal from the October 25, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Mercado voluntarily quit on October 12, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on November 16, 2017. Mr. Mercado participated. Kristin Stanley represented the employer and presented additional testimony through Armando Ruiz. Spanish-English interpreter Sidharta Goris of CTS Language Link assisted with the hearing.

**ISSUE:**

Whether Mr. Mercado's voluntary quit was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mary Ann's Specialty Foods, Inc. operates a refrigerated food production plant in Webster City. William Mercado was employed at that plant as a full-time production line worker from 2012 until October 9, 2017, when he voluntarily quit the employment. Mr. Mercado's work duties involved constructing boxes for use in production. Mr. Mercado performed his work duties in a refrigerated area of the plant. Mr. Mercado could wear gloves as necessary. Mr. Mercado received appropriate breaks in a non-refrigerated area of the plant. All but a few areas of the plant were refrigerated. Those areas that were not refrigerated provided work for a very small number of employees. Mr. Mercado quit when the employer declined to move him from his regular work area and duties to different duties in a non-refrigerated area of the plant. Mr. Mercado wanted to move due to discomfort he had begun to feel in his hands. The employer invited Mr. Mercado to consult a physician and provide medical documentation to the employer in support of his request for a workplace accommodation. Mr. Mercado advised the employer that he would not be consulting with a doctor and would not be returning to the employment unless the employer changed his work assignment. At the time Mr. Mercado elected to separate from the employment, the employer continued to have work available for Mr. Mercado in his regular duties and the employment was not in jeopardy.

## 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.

Workforce Development rule 817 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.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005).

Iowa Admin. Code r. 871-24.25(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

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 a voluntary quit without good cause attributable to the employer. The evidence in the record fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to leave the employment. The evidence fails to establish a bona fide medical condition that made it necessary for Mr. Mercado to leave the employment. Mr. Mercado's quit was not based on advice from a physician. Instead, Mr. Mercado voluntarily quit due to dissatisfaction with the work environment. Because Mr. Mercado's voluntarily quit was without good cause attributable to the employer, Mr. Mercado is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Mercado must meet all other eligibility requirements. The employer's account shall not be charged.

**DECISION:**

The October 25, 2017, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The effective quit date is corrected to October 9, 2017. 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. The claimant must meet all other eligibility requirements. 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

jet/rvs