

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY H GROGAN
Claimant

APPEAL NO. 13A-UI-11716-S

LOFFREDO FRESH PRODUCE CO INC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/15/13
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(37) – Resignation
871 IAC 24.26(6)b – Employment Separation/Job Related Injury or Illness
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated October 7, 2013, reference 01, that held he voluntarily quit without good cause on September 9, 2013, and benefits are denied. A hearing was held in Des Moines, Iowa on December 3, 2013. The claimant, and Attorney, David Leitner, participated. Adam Babcock, Processing Director, Mike Vilez, HR Manager, and Espnola Cartmill, Attorney, participated for the employer. Employer Exhibits 1, 2 and Claimant Exhibits A, B and C were received as evidence.

ISSUES:

The issue is whether the claimant voluntary quit with good cause attributable to the employer.

The issue is whether the claimant was able and available for work

FINDINGS OF FACT:

The administrative law judge having considered the witness testimony and having considered the evidence in the record finds that: The claimant began work on July 12, 2012, and last worked two and one-half years as a full-time processing manager on September 9, 2013. Claimant was a salaried employee who worked substantial weekly hours. Claimant's immediate supervisor was Dean Risk, and his department processing supervisor was Adam Babcock.

Claimant submitted a written resignation from employment to Babcock on Friday September 6, 2013 with a two-week notice ending date of September 20. Babcock responded by saying he was going to hold it until Monday in order to give claimant the weekend to reconsider. Babcock did message the HR department about it.

Claimant worked until the noon hour on September 9 and left work to end his employment. The employer did not tell claimant he could not work until his September 20 notice date. Claimant did not discuss his resignation decision with the employer before leaving, and he did not rescind it.

Claimant had been suffering some emotional health issues due to working long hours. He saw Dr. Covert on July 11, 2013 who counseled him about severe depression, panic attacks, and dizziness. Claimant attributed his emotional health issues due to work related stress. He was a salaried employee manager who worked long hours. He was diagnosed with anxiety and depression, and prescribed medication. Claimant did not voice these health issues to his employer and he did not provide it with a July 11, 2013 medical report.

Claimant returned to his doctor for counseling on September 4. He continued working long hours. He complained that his boss was yelling at him. The doctor noted claimant's mental health is a little bit better than his last visit. Doctor concluded there needed to be a major adjustment at the work place or he needs to seek other employment. The doctor added insomnia to the emotional health issues. Claimant did not voice his employment concerns to the employer to the extent he did with his doctor, and he did not provide it with the September 4 medical report.

Director Babcock recalled that the employer had numerous counseling sessions with claimant regarding job performance issues. The employer counseled claimant on August 20 and 29 about his disorganization of the plant and not communicating with employees. The counseling continued on September 3 and 5.

Claimant did not tell Babcock or the HR department that he was suffering from stress to the point he was being treated by a doctor for emotional health issues. He did not tell the employer his doctor was advising him to quit due to job related stress.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 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.

871 IAC 24.25(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

The administrative law judge concludes claimant voluntarily quit without good cause attributable to the employer effective September 9, 2013 due to resignation.

The claimant is required to provide the employer with competent evidence showing adequate health reasons before quitting. He must advise the employer he intends to quit unless the problem due to a work-related health condition is corrected or he is reasonably accommodated.

Claimant had the medical reports that establish his mental health issues complete with diagnosis and recommendation. His failure to provide this information to the employer gave it no opportunity to deal with his health issues and provide it the opportunity to correct or accommodate. He made no statement in his written resignation that he was leaving due to emotional health issues.

871 IAC 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The administrative law judge further concludes claimant did not voluntarily quit with good cause due to detrimental or intolerable working conditions.

Claimant worked the same job for two and one-half years. He made no meaningful complaint to the employer about working long hours and being subject to ridicule by any supervisor to the point of stress. There were a number of employer–claimant counseling sessions about work performance where claimant had the opportunity to share his complaints and he did not do so.

Although claimant did work long hours it was part of his job as a salaried employee. He failed to show how his job had become so stressful during the last several months as distinguished from anytime in his earlier work period. The work stress issue is tied so closely to leaving employment due to health reasons that the former cannot be meaningfully distinguished as a separate good cause for quitting. He made no statement in his written resignation he was leaving for this reason.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as

defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes there is no availability disqualification, because Claimant's doctor imposed no permanent work restrictions in his September 11, 2013 medical report.

DECISION:

The decision of the department representative dated October 7, 2013, reference 01, is affirmed. The claimant voluntarily quit without good cause attributable to the employer due to resignation on September 9, 2013. The claimant is able and available for work. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs