

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PARISH T ROSS

Claimant

APPEAL NO. 11A-UI-02787-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PINERIDGE FARMS LLC
FORESURE TRANSPORT**
Employer

**OC: 11/21/10
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 25, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 30, 2011. Claimant participated. Isaac Oyivo was a witness for the claimant. Employer participated by John Anderson, Human Resources Manager, and Christo Hinojos, Safety Director. The record consists of the testimony of Parish Ross; the testimony of Isaac Ojivo; the testimony of John Anderson; and the testimony of Christo Hinojos.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a pork processing plant located in Des Moines, Iowa. The claimant was hired on August 7, 2008, as a full-time employee in the cutting department. His job was to box and weigh trim. His last day of actual work was June 3, 2010.

Sometime in mid May 2010, the claimant reported stomach pain. The employer arranged for an appointment with a physician for evaluation and a worker's compensation claim was filed on the claimant's behalf by the employer. The claimant was diagnosed with an inguinal hernia and surgery was scheduled for June 4, 2010. The claimant was permitted to work light duty until the surgery. He was given a job of scooping trim. This job required lifting of less than five pounds. The claimant had no difficulty performing this job.

The claimant was off work for an extended period of time. On November 12, 2010, the claimant's physician wrote a work release that allowed the claimant to return to work full duty on November 22, 2010. The claimant did not contact the employer. On November 30, 2010, a

certified letter was sent to the claimant asking him about his intentions to return to work. The employer informed the claimant that he was still a full-time employee and that work was available for him. The claimant finally agreed to a meeting with the employer on December 28, 2010.

On December 28, 2010, the claimant met with the employer. The employer offered the claimant the light-duty job he had previously worked prior to his surgery. It was a job scooping trim and the lifting was less than five pounds. The claimant agreed to return to work. He asked, however, that his return to work be delayed because he wanted to go to Missouri to spend New Year's Day with his family. The claimant and the employer agreed that he would return to work on January 4, 2011, at 7:00 a.m.

The claimant did not return to work on January 4, 2011. He called the employer at 5:34 a.m. and said that he would not be in to work because his stomach was bothering him. The claimant never contacted the employer again. The employer made repeated efforts to contact the claimant but the employer could not reach him. The employer waited until January 14, 2011, and the claimant still did not contact the employer. The employer sent the claimant a certified letter on January 14, 2011, which could not be delivered to the claimant and returned to the employer. The claimant's employment ended on January 14, 2011.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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 this case established that the claimant, in effect, abandoned his job by refusing to return to work on January 4, 2011, as he had agreed to do on December 28, 2011. The claimant did call the employer on January 4, 2011, to say that he would not be coming to work because "his stomach hurt." The claimant had continued complaints of pain following surgery for repair of an inguinal hernia. He had been released to return to work full duty back on November 22, 2010. This single phone call was the only contact the claimant ever made with the employer following his agreement to return to work on January 4, 2011.

The claimant offered no explanation for his failure to return to work after January 4, 2011, or to contact the employer. He did not ask to return to the physician that had treated him for his work-related injury. The employer tried several times to call the claimant but he could not be reached. A certified letter was sent to the claimant, which could not be delivered. The most reasonable inference from the evidence is that the claimant did indeed abandon his job. The employer waited until January 14, 2011, before concluding that the claimant had quit. Even then the claimant made no effort to return to work.

The claimant did testify that he was still having stomach pain and that he could not lift more than 20 pounds. The job that the claimant agreed to do was a job that involved lifting of less than five pounds. He had done the job previously while he was on light duty prior to his hernia surgery. The claimant's insistence that he wanted to work is undercut by his failure to return to work more than a month after he was released to return to full duty on November 22, 2010. His failure to even be in touch with the employer further undermines the credibility of his testimony. The most reasonable inference from the evidence is that the claimant did not want to return to work to do a job that he agreed to perform. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The decision of the representative dated February 25, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css