

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

STEVEN M VOSS

Claimant

APPEAL NO. 18A-UI-10222-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARRIS CLIMATE CONTROL

Employer

OC: 04/29/18

Claimant: Appellant (1R)

Section 96.5-1-d - Voluntary Quit for Medical Reasons

Section 96.5-1 - Voluntary Quit

871 IAC 24.1(113)a – Separations From Employment

Section 96.5-1 – Voluntary Leaving - Layoff

STATEMENT OF THE CASE:

Steven Voss (claimant) appealed a representative's October 1, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Harris Climate Control (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 26, 2018. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer in April 2018, as a full-time pipe fitter. He worked for about seven days when one of his eyes started to hemorrhage. He returned to work the next week. After three days, the other eye began to hemorrhage. The claimant asked the employer to lay him off on or about April 23, 2018. The employer granted the claimant's request. He filed for unemployment insurance benefits with an effective date of April 29, 2018. The claimant had surgery on approximately May 7, 2018. He received unemployment insurance benefits in the amount of \$1,365.00 for the three-week period ending May 19, 2018. His doctor told him he could return to work on or about May 21, 2018. The employer put him back to work.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant was not laid off for lack of work.

Iowa Code section 96.5(1) 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.

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

For a separation to qualify as a layoff, it must be "initiated by the employer". The employer separated the claimant from employment at the claimant's request. If the claimant requests time off, he is indicating an intent to end the employment relationship. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by the claimant's words and actions. He told the employer to separate him from employment until further notice and the claimant stopped appearing for work. Therefore, the separation is not a layoff.

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v.*

Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A “recovery” under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to an injury under the advice of his physician. The employer consented to his leaving. The claimant was willing to provide the employer with certification that he recovered. He offered his services to the employer and work was available. There was no separation from employment after the claimant was released to return to full recovery. There was no qualifying separation. Benefits are denied.

The issue of whether the claimant is able and available for work is remanded for determination.

DECISION:

The representative’s October 1, 2018, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant’s weekly benefit amount provided the claimant is otherwise eligible. The issue of whether the claimant is able and available for work is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs