

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JOEY FINCHER
PO BOX 91
MOULTON IA 52572**

**BLOOMFIELD CARE CENTER
800 N DAVIS ST
BLOOMFIELD IA 52537**

**Appeal Number: 06A-UI-06768-LT
OC: 05-14-06 R: 03
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.26(4) – Intolerable Working Conditions

STATEMENT OF THE CASE:

Employer filed a timely appeal from the June 26, 2006, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on July 25, 2006. Claimant participated. Employer participated through Linda Grindle. The issue is whether claimant quit the employment without good cause attributable to the employer. The administrative law judge took judicial notice of the administrative record. Employer's Exhibit 1 was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time certified med aide/CNA from March 25, 2005 through May 2, 2006

when he gave his notice of his intention to resign May 5 due to employer's non-compliance with his work-related injury medical restrictions.

On March 26, claimant was assigned light-duty work restrictions related to repetitive heavy lifting. On April 26, 2006, Andrew Allen, D.C., excused claimant from work activities that involved bending at the waist and lifting through at least "next Wednesday," May 3, 2006. (administrative record) He complained about employer's failure to comply with those restrictions on May 1 to Steinbeck and Grindle and former DON Darla Schaffer. They responded that they could not know if an employee were "faking" just because they had a doctor's excuse. Claimant then gave his notice of resignation effective by the end of the day, May 5.

On May 2, 2006, claimant was injured at work, reported to charge nurse, Kathy Tallman, who directed him to Davis County Hospital emergency room and was directed to follow up with his doctor in two to three days. (administrative record) Claimant provided discharge instructions to Steinbeck and offered to stay in employment if employer was willing to abide by medical work restrictions. Steinbeck declined to allow claimant to rescind his resignation. On May 3, claimant saw his primary treating physician, Nancy Barton, M.D., and was told to remain off work for five days. (administrative record) Barton has also opined that claimant's condition was employment-related. (administrative record)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with good cause attributable to the employer.

Iowa Code § 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 24.26(2) and (4) provide:

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:

(2) The claimant left due to unsafe working conditions.

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

Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993); *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993); and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871 IAC 24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871 IAC 24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871 IAC 24.26(4),

notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

While employer argues it would have met the medical restrictions until May 15 when a new non-work injury restriction non-accommodation policy would go into effect. This bolsters claimant's testimony that employer did not believe his injury was work-related in spite of documentation to the contrary. Since employer was not willing to meet claimant's work-related injury medical restrictions, claimant's decision to quit to preserve his health was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The June 26, 2006, reference 02, decision is affirmed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

dml/cs