

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUHONG JEON
Claimant

APPEAL 16A-UI-07491-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOHRN TRANSFER COMPANY LLC
Employer

OC: 06/19/16
Claimant: Appellant (1)

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 7, 2016 (reference 01) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on July 27, 2016. The claimant, Juhong Jeon, participated personally. The employer, Dohrn Transfer Company LLC, participated through Human Resources Director Sally Jackson. Employer's Exhibits 1 – 4 were admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a truck driver from March 17, 2016 until June 2, 2016. Claimant's terminal manager was Mike Peterson. Claimant injured his shoulder. This injury was not work-related. He reported to the employer that his shoulder was injured as a result of playing tennis. He was unable to work for one day, on June 2, 2016, according to his treating physician. Claimant voluntarily quit his employment even though he received a full medical release from the treating physician.

The claimant spoke with Mr. Peterson on June 2, 2016 and told him that he voluntarily quit. Mr. Peterson urged him to take two additional days off of work to allow his shoulder to heal but claimant refused. There were no medical restrictions regarding the claimant's work and he was released to full duty by his treating physician as of June 3, 2016. Claimant did not return to work after June 2, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows: As a preliminary matter I find that the claimant voluntarily quit and was not discharged from employment.

The decision in this case rests, at least in part, upon the credibility of the parties. The issue must be resolved by an examination of witness credibility and burden of proof. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds that the employer's testimony that claimant reported the injury was not work related is more credible. Claimant at first stated that he did not report the injury to the employer and then stated that he did report the injury. These statements are inconsistent. Further, claimant claims that he had to quit because of the shoulder injury but then stated that it was a minor injury. The injury allegedly occurred in March of 2016 but the claimant continued to work without any absences for over a month. Claimant's doctor also released him to work without restrictions as of June 3, 2016. I find employer's version of events more credible than claimant's.

Iowa Code § 96.5(1)d 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. 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.

Iowa Admin. Code r. 871-24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

An employee's failure to return to the employer and offer services upon recovery from an injury "statutorily constitutes a voluntary quit and disqualifies an individual from unemployment insurance benefits." *Brockway v. Emp't Appeal Bd.*, 469 N.W.2d 256 (Iowa Ct. App. 1991).

Subsection d of Iowa Code § 96.5(1) provides an exception; however, the statute specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is fully recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346 (Iowa 1992); *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n.*, 468 N.W.2d 223, 226 (Iowa 1991) (noting the full recovery standard of section 96.5(1)(d)). In the *Gilmore* case he was not fully recovered from his injury and was unable to show that he fell within the exception of section 96.5(1)(d). Therefore, because his injury was not connected to his employment and he had not fully recovered, he was considered to have voluntarily quit without good cause attributable to the employer and was not entitled to unemployment benefits. See *White*, 487 N.W.2d at 345.

Claimant provided no medical documentation to establish that this injury was work related. Claimant did not file a claim for worker's compensation benefits and in fact told his supervisor that the injury was due to playing tennis. Claimant has not established that the medical condition was work related, as is his burden.

Because claimant has not established that the medical condition was work related, he must meet the requirements of the administrative rule cited above. He did not leave his employment based upon the advice of his physician; rather his physician confirmed that he was able to work without restriction as of June 3, 2016. Claimant simply chose not to work as he did not return to the employer for work. For unemployment insurance benefits purposes, the employer is not obligated to accommodate a non-work related medical condition. Alternatively, even if claimant's testimony was found to be more credible than the employer's testimony that the injury was work-related, the claimant contends that he is not fully recovered and is unable to work due to the shoulder injury. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The July 7, 2016 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit without good cause attributable to employer. Unemployment benefits are withheld in regards to this employer until such time as claimant is deemed eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/