

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HUY Q PHAM**  
Claimant

**APPEAL NO. 08A-UI-04791-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OMEGA CABINETS LTD**  
Employer

**OC: 04/13/08 R: 12  
Claimant: Appellant (4)**

Section 96.5-1-c – Voluntary Leaving/Care of Ill or Injured Family Member  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Huy Q. Pham (claimant) appealed a representative's May 14, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Omega Cabinets, Ltd. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 18, 2008. The claimant participated in the hearing. Jodi Schaefer appeared on the employer's behalf. Phung Nguyen served as interpreter. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit for a good cause attributable to the employer?

**FINDINGS OF FACT:**

After a prior period of employment with the employer, the claimant most recently started working for the employer on July 9, 2007. He worked full time as a woodworker on the second shift in the employer's cabinetry business. His last day of work was April 3, 2008. He quit effective that date to care for his father in Texas.

The claimant's father was hospitalized from March 3 to March 14 and was readmitted on March 26; after the second admission, he was not released until April 14. He was diagnosed and treated for several conditions, including acute heart failure, hypertension, chronic pulmonary disease, and chronic kidney failure. He was admitted again on April 17 and discharged on April 22. His doctor has indicated that he needs to have close observance.

On March 11 the claimant visited with Ms. Schaefer, the employer's human resources representative, but determined not to apply for FMLA (Family Medical Leave) because he believed the length of time he might need to be gone would exceed the maximum time allowed under that leave, and he did not wish to restrict the employer in filling the position during that time. As a result, he determined to offer his resignation. He has not excluded the possibility that he might seek to return and reapply for work with the employer in the future when his father is sufficiently recovered.

The claimant's father lives alone. The claimant found other housing in the area, but is at his father's home in the morning before his father awakens and prepares food for the day. He goes out for a few hours in the afternoon to look for part-time work and to run errands, but returns in the early evening, usually staying until his father retires to bed. He drives his father to doctor's appointments as needed, usually one to three times per week.

#### **REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Where the quit is due to a family member's medical or health reasons, the quit is disqualifying at least until the family member has recovered and the claimant seeks to return to work but no work is available with the employer. Iowa Code § 96.5-1-c; 871 IAC 24.26(8).

871 IAC 24.25 provides that, 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 claimant did express his intent not to continue to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2.

A voluntary quit can be for good cause attributable to the employer even if the employer is free from any negligence or wrongdoing. Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956); Shontz v. IESC, 248 N.W.2d 88 (Iowa 1976). The claimant's original voluntary quit could become good cause due to the employer; however, in order to fully comply with the requirements to treat this as a quit with good cause attributable to the employer, the claimant must also demonstrate that he sought to return to his work with the employer but no work was available, and that in the interim he did not have other employment. At this time, these conditions have not been met. Further, during the time the claimant is actually occupied providing the care for his father, to the extent that he is not available for full-time employment to the same extent as he was during his employment with the employer, the claimant would not be "able and available" for work as required to be eligible to receive unemployment insurance benefits. Iowa Code § 96.4-3; 871 IAC 24.22(2).

The claimant has not satisfied this burden. Benefits are denied until or unless the claimant satisfies the requirements of the statute and rule as to attempting to return to his employment.

**DECISION:**

The representative's May 14, 2008 decision (reference 01) is modified in favor of the claimant. The claimant voluntarily left his employment in order to care for an ill or injured family member, but has not yet offered to return to work. As of April 3, 2008, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, or until he has offered to return to work and no work was available, provided he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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