

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEREMY CRUSE
Claimant

EAGLE WINDOW AND DOOR LLC
Employer

APPEAL 21A-UI-24371-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/12/21
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 26, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on December 29, 2021. The claimant participated and testified. The employer did not participate. No exhibits were received into the record.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as a loader from February 2016, until he was separated from employment on September 10, 2021, when he was terminated. The claimant's immediate supervisor was Larry Grant.

The claimant last worked for the employer in June 2021. At that time, the claimant injured his shoulder. The claimant was placed on Family Medical Leave Act leave.

On August 7, 2021, the claimant received a letter dated August 1, 2021, in the mail stating he would be terminated if he did not return with a release by August 6, 2021. The claimant left five voicemails with the employer's Human Resources Department informing them that he could not get an appointment within that window because he uses the Veteran's Administration network. He also explained that he received the letter nearly a week after the date on the letter. The employer did not respond to these calls. The claimant then attempted to return to work, but he was told he could not be there without first obtaining a release. The claimant explained again that he could not get an appointment that quickly with his doctor.

On September 10, 2021, the claimant received a termination notice from the employer. Shortly after receiving this letter, the claimant attended the appointment with his physician and was released to return to work without restriction.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was with good cause attributable to the employer.

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.

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.

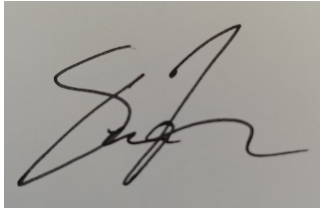
A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left 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)

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Services v. Jackson and Employment Appeal Board*, 810 N.W.2d 532 (Iowa Ct. App. 2012).

The claimant was terminated while he was on leave. The claimant could not meet the requirements given to him by the employer. This was not due to the claimant's intent. Rather the claimant simply could not get an appointment to be released in that time frame. The employer terminated the claimant while he was absent on medical care. Benefits are granted.

DECISION:

The October 26, 2021, (reference 01) unemployment insurance decision is reversed. The claimant's separation from employment is not disqualifying. Benefits are granted, provided he is otherwise eligible.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

January 27, 2022
Decision Dated and Mailed

smn/kmj