IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

ROBERT J PURVIS
Claimant

TRYNANNSAGE INC
Employer

APPEAL NO. 18A-UI-11143-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/14/18
Claimant: Respondent (2)

Iowa Code Section 96.5(1)(d) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 8, 2018, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged, based on the deputy's conclusion that the claimant was discharged on April 13, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on November 28, 2018. Claimant Robert Purvis participated. Scott Utzinger represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 18A-UI-11029-JTT. Exhibits 2, 3, 4, A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: database readout (DBRO), continued claims (KCCO), and the quarter wage report (WAGEA).

ISSUES:

Whether Mr. Purvis was discharged from the employment for misconduct in connection with the employment.

Whether Mr. Purvis voluntarily quit the employment without good cause attributable to the employer.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Trynannsage, Inc., d/b/a Glass Concepts, is an interior glass installation company located in Cedar Rapids. The company installs shower doors, mirrors, windows and other glass features. The company owners are Scott Utzinger and Katherine Utzinger. Robert Purvis is a career construction worker with about 20 years' experience in the construction industry. Mr. Purvis was employed by Glass Concepts as a full-time glass installer from October 2015 and last performed work for the employer on April 12, 2018. Scott Utzinger was Mr. Purvis' immediate supervisor. Mr. Purvis' work was physically demanding and regularly involved working on his knees. Mr. Purvis was usually assisted by another installer. Mr. Purvis' scheduled work hours were 8:00 a.m. to 5:00 p.m., Monday through Friday. It was not uncommon for Mr. Purvis to work until 6:00 or 7:00 p.m. At other times, Mr. Purvis would be able leave work at 5:00 p.m. or earlier.

Mr. Purvis voluntarily quit the employment on April 12, 2018, due to ongoing medical issues related to his right knee. Mr. Purvis asserts that his knee issues are work-related. The employer asserts that the knee issues were not caused by the employment and were instead the result of decades of work in the construction industry. In April 2017, Mr. Purvis experienced swelling in his right knee. Mr. Purvis attempted on his own to drain fluid from his knee. When that did not work, Mr. Purvis sought medical evaluation. The medical provider drained fluid from Mr. Purvis' knee, diagnosed Mr. Purvis with an infection in his knee, and diagnosed chronic bursitis. Mr. Purvis continued to have ongoing issues with his knee and continued to be absent intermittently due to his knee until he quit the employment on April 2018. On April 12, 2018, Mr. Purvis' medical provider evaluated his right knee and determined that Mr. Purvis needed to be off work "until further notice and for further evaluation of right knee pain." At that time, Mr. Purvis notified the employer that he intended to apply for Social Security disability benefits and was leaving the employment. The employer attempted to persuade Mr. Purvis to remain in the employment at least on a very part-time basis to train newer employees. Though Mr. Purvis presented the employer with no medical documentation and requested no accommodations, the employer offered to provide Mr. Purvis with a stool to sit on at job sites and offered continued work that would not require Mr. Purvis to work on his knees. In a desperate attempt to retain Mr. Purvis' services, the employer even offered an illegal arrangement whereby the employer would pay Mr. Purvis cash to avoid interfering with Mr. Purvis' application for disability benefits. Mr. Purvis declined the offered accommodations. After Mr. Purvis notified the employer that he was leaving the employment, Mr. Utzinger told Mr. Purvis that he had already replaced him. This was not a statement that the employer was ending the employment. The statement was instead in reference to Mr. Purvis' increasingly frequent absence from work and the employer's resulting need to assign other employees to perform Mr. Purvis' work during those absences.

The discussion that took place following Mr. Purvis' termination of the employment included the following text message from Mr. Purvis to Mr. Utzinger on April 17, 2018: "Scott I've told you for 3 weeks I can't do it anymore I applied for disability and can't have any income I have to follow doctors and they say no more I'm done."

The discussion that took place following Mr. Purvis' termination of the employment included the following text message from Mr. Purvis to Mr. Utzinger on April 18, 2018:

> Scott I talked it over with the wife about working for cash and she said no so I have respectfully decline and I just as soon no to talk about it so please don't call me I'm under enough stress so like I said I'm done and don't want to talk about no more please understand it's my future we're talking about so please don't call me anymore.

That text message was followed a text message response from Mr. Utzinger to Mr. Purvis: "I understand but like I said if I can do anything let me know. I assume you don't want Caleb or Brandon calling with questions as well or is that ok."

Mr. Purvis' medical provider never released Mr. Purvis to the return to the employment and Mr. Purvis never attempted to return to the employment.

Mr. Purvis established an original claim for benefits that was effective October 14, 2018, but has received no benefits in connection with the claim. Trynannsage, Inc. is the sole base period employer in connection with the claim.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a

separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *See Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 871-24.25.

The evidence in the record, as outlined in the findings of fact, indicates that Mr. Purvis voluntarily quit the employment and was not discharged. The evidence establishes that Mr. Purvis left the employment upon the advice of a licensed medical professional due to ongoing medical issues related to his knee. The evidence indicates that the employer attempted to continue the employment and was willing to provide reasonable and unreasonable accommodations in an effort to continue the employment.

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.

Iowa Administrative Code rule 817-24.26(6) provides as follows:

> Separation because of illness, injury, or pregnancy.
> a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.
> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work–related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable

work which is not injurious to the claimant's health and for which the claimant must remain available.

The administrative law judge need not decide whether Mr. Purvis' knee issues were *caused* by the employment in order to decide this case. It is clear from the record that the regular kneeling that was inherent to the work *aggravated* Mr. Purvis' chronic knee issues and necessitated that he no longer perform that type of kneeling work. In that regard, the quit was based on a work-related medical issue. Mr. Purvis provided no medical documentation to the employer, but fully informed the employer of the ongoing medical issue. Prior to quitting the employment, Mr. Purvis did not threaten to quit unless the employer provided him with reasonable accommodation of his medical issues. Though Mr. Purvis requested no medical accommodation, the employer remained willing to provide accommodation. There was no other basis for the voluntary quit other than the medical issue.

Based on the evidence in the record and application of the applicable law, the administrative law judge concludes that Mr. Purvis voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Purvis is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Purvis must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

Because Mr. Purvis has received no unemployment insurance benefits in connection with the claim, there is no overpayment issue to address.

DECISION:

The November 8, 2018, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer due to a work-related medical issue. The quit was effective April 12, 2018. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs