IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHAEL J INGRAM
Claimant

TRANSWORLD SYSTEMS, INC
Employer

APPEAL NO. 12A-UI-06951-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/08/12
Claimant: Appellant (5)

Section 96.5(1)(d) – Voluntary Quit

STATEMENT OF THE CASE:

Michael Ingram filed a timely appeal from the June 13, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 20, 2012. Mr. Ingram participated. Lynette Snyder represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 12A-UI-07572-JTT. Exhibits 1 through 18, A through H, J through R, and Department Exhibit D-1 were received into evidence.

ISSUE:

Whether Mr. Ingram separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Ingram was employed by Transworld Systems, Inc. as a full-time telephone collections representative from October 2010 and last performed work for the employer on December 14, 2011. Mr. Ingram performed the collections work from home. The majority of Mr. Ingram's work time was spent on the telephone. Mr. Ingram also spent a substantial amount of time working at a computer. Mr. Ingram's immediate supervisor was Allen Trempe, general manager. On December 14, 2011, Mr. Ingram suffered a near complete loss of his voice. Mr. Ingram, but not his treating physicians, attributed the loss of Mr. Ingram's voice to the telephone work he did for the employer. Mr. Ingram requested and was approved for a medical leave of absence effective December 15, 2011. Mr. Trempe encouraged Mr. Ingram to take whatever time he needed so that his voice could fully recover. Thereafter, Mr. Ingram continued on an approved leave of absence until April 13, 2012.

On December 20, 2011, Mr. Ingram provided the employer with a doctor's note that indicated he had been seen on December 16, 2011 for an acute medical problem. The note indicated that Mr. Ingram was not able to work December 16 through December 20 but could return to full duty, without restrictions on December 21, 2011.

On January 4, 2012, Mercy Family Care, faxed to the employer a doctor's note that continued Mr. Ingram off work due to illness and that indicated he could return to work on January 12, 2012 without any restrictions. The note was from Dr. Steven Sohn, M.D., at Mercy Family Care in Perry

On January 12, 2012, Mercy Family Care, faxed to the employer a doctor's note that continued Mr. Ingram off work and released him to return to work on January 19, 2012 without restrictions. The note was from Dr. Steven Sohn, M.D., at Mercy Family Care in Perry.

On January 18, 2012, Mr. Ingram provided the employer with a note from a nurse practitioner with Mercy Family Care. The note indicated that Mr. Ingram had been seen for laryngitis on January 18, 2012, that he needed to rest his voice, and that he could return to work without restrictions on January 28, 2012. A separate note from the nurse practitioner, also provided to the employer on the same day, provided the same information set forth above but also indicated that Mr. Ingram had an appointment with a medical specialist scheduled for January 31, 2012.

On January 25, 2012, Mr. Ingram provided the employer with a doctor's note that continued him off work and released and returned to work on February 4, 2012 without restrictions. The note was from Dr. Steven Sohn, M.D., at Mercy Family Care in Perry.

On February 7, 2012, the Iowa Clinic Ear, Nose and Throat Center faxed the employer a memo that indicated Mr. Ingram had been seen on February 1, 2012 and would be able to return to work on February 18, 2012. The memo further indicated that Mr. Ingram would need to rest his voice during that time.

On February 15, 2012, the Dallas County Hospital faxed a memo to the employer that indicated Mr. Ingram had been seen on February 15, 2012, that he needed to rest his voice or two weeks from February 15, 2012. The doctor's note was from Dr. Steven Herwig, D.O., of the Iowa Clinic Ear Nose and Throat Center.

On March 7, 2012, the employer sent Mr. Ingram a letter that indicated the employer had not received any documentation to support Mr. Ingram's absence beyond March 5, 2012. The employer provided Mr. Ingram with a March 14, 2012 deadline to provide documentation or the employer would assume he had decided not to return to the employment.

On March 7, 2012, Mr. Ingram provided the employer a doctor's note from Mercy Family Care that indicated he was seen that day for illness, that continued him off work, and that indicated he could return to work on March 14, 2012.

Later in March, the employer sent Mr. Ingram a letter, erroneously dated March 7, 2012, that indicated the employer did not have documentation from Mr. Ingram to support his absence beyond March 13, 2012. The employer provided Mr. Ingram with a March 22, 2012 deadline to provide documentation or the employer would assume he had decided not to return to the employment.

On March 30 2012, Mercy Medical Center in Des Moines faxed a memo to the employer indicating that Mr. Ingram had been hospitalized at Mercy Medical Center March 27, 2012 through March 29, 2012. The letter indicated that he was admitted with neurologic abnormalities felt to be secondary to cerebral ischemia and that he was treated by doctors David Jones, M.D., and Bruce Hughes from the Ruan Neurology clinic. The memo further indicated that Mr. Ingram had been instructed to follow-up with his primary care physician in two weeks and to remain off work until that time.

Mr. Ingram concluded at the end of his hospitalization that he would not be returning to work for Transworld Systems and ceased making his daily calls to the automated absence reporting number. Mr. Ingram was required to call in each day he was absent from work.

On April 10, 2012, Mr. Ingram sent a letter to Mr. Trempe. The letter states as follows:

> Good talking to you a short time ago regarding my situation.
>
> After losing my voice back in December 2011 which made it impossible to speak and converse w/ consumers that owe the company money and after ending up in the hospital March 27, 2012, I wanted to let you know that I would request to be laid off from my being employed by Transworld Systems. As you know, it has been very stressful for me to perform, as you indicated at 100% effectively collecting for the company. You told me to take 2,3 weeks even 2 or 3 months to get back to 100%. After meeting with several doctors and a speech therapist and conducting the exercises the speech therapist instructed me to do over the past several months, I am still nearly speechless and after being in the hospital due to stress, I'm not in a very good position to work for you at 100%, through no fault of my own.
>
> I have left several voice mails w/ April Joy Manalo, Human Resources and Leaves Administrator in New York to please mail me documentation that I have been laid off from Transworld Systems. To date I have not heard from her but anticipate doing so.
>
> Good Luck to you, Allen and you staff in the future. I'll have to hope to gain employment in some other field/profession to make a living.

On April 30, 2012, Mr. Ingram mailed a letter to April Joy Manalo, workers' compensation and leaves administrator at Transworld Systems. The letter indicates, in relevant part, as follows:

> I have tried to contact you via the U.S.P.S. mails along with 6 telephone calls (that all 6 have not been returned) regarding you documenting me in writing that Transworld Systems is "laying me off" from my employment with Transworld Systems.
>
> I have been more than fair in supplying you with documentation from several physicians that due to my losing my voice (12/15/2011) from being on the telephone attempting to collect on referred accounts for collection, I can no longer perform my duties as I have since October 4, 2010, my starting date for Mr. Allen Trempe, General Manager of the St. Paul, MN. Office. Mr. Trempe has stressed to me many times that unless I can converse with debtors at 100% efficiency, I should remain off work until I am at 100% efficient. I have followed his orders and have also followed the therapy instructed by the "voice therapist" in Des Moines, IA. To the "T" every day.
>
> ***
>
> I have not been fired by Transworld Systems. I have not quit working for Transworld Systems. That is why I have requested many, many times for a statement from you and Transworld Systems that I have been laid off due to my medical condition regarding my voice, through no fault of my mine.
>
> Please supply me with this documentation that I have requested you to do several times in the past several weeks.

On May 2, 2012, the employer mailed Mr. Ingram a letter indicating that the employer had received no documentation to support Mr. Ingram's need to be absent beyond April 13, 2012.

The employer provided Mr. Ingram with a May 9, 2012 deadline for providing the requested documentation or the employer would assume that Mr. Ingram had decided not to return to the employment. Mr. Ingram did not respond to the letter.

On May 18, 2012, the employer sent Mr. Ingram a letter indicating that the employer had still not received documentation to extend his leave of absence beyond April 13, 2012. The employer provided a May 25, 2012 deadline for submitting the documentation or the employer would conclude Mr. Ingram had decided not to return to the employment. Mr. Ingram did not respond to the letter.

Mr. Ingram provided a letter for the appeal hearing from his primary care physician, David M. Huante, M.D. The letter is dated June 13, 2012. Mr. Ingram had requested the letter from his primary care doctor to support his application for unemployment insurance benefits. Mr. Ingram had not previously provided the document to the employer. The letter reads as follows:

> I have been asked to write this letter on behalf of Michael Ingram regarding a recent problem with voice disturbance. As you are aware, on December 14, 2011 Michael had near complete loss of his voice *which he feels* is from having talked on the phone as part of his job collecting accounts for Transworld Systems. Over time, Michels [sic] voice has improved but has never returned to baseline. He has consulted appropriately with his primary care physician and was referred to an ENT specialist. Speech therapy was recommended which patient has been 100% compliant with. However, despite following recommended speech therapy exercise as well as voice rest, his voice has never returned to normal. I would estimate it is 60-70% normal or baseline.
>
> Michael is in the process of seeking other employment where he will not have to use his voice. I have been asked by him to render an opinion medically as to whether Michael's voice will improve or not. It is *conceivable* that his voice disturbance is now a permanent one given lack of improvement despite compliance with voice rest and speech therapy recommended exercises for the past several months. It is also *possible* that if he returns to work his voice disturbance will indeed worsen. I did recommend that Michael continue with the speech therapy exercises as outlined, and consider a reevaluation by his ENT physician for other possible suggestions to improve his voice.

[Emphasis added.]

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
>
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
>
> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 871 IAC 24.25.

For reasons set forth below, the administrative law judge concludes that Mr. Ingram voluntarily quit the employment without good cause attributable to the employer by failing to return to work at the end of an approved leave of absence.

Iowa Code section 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.

Workforce Development rule 817 IAC 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.

Iowa Administrative Rule 871 IAC 24.22(2)(j) provides as follows:

> j. *Leave of absence.* A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee–individual, and the individual is considered ineligible for benefits for the period.
>
> (1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee–individual, the individual is considered laid off and eligible for benefits.
>
> (2) If the employee–individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.
>
> (3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

Though the above provision appears in a rule that addresses a claimant's availability for work, rather than separations from employment, it is instructive on how the administrative law judge should analyze the present case.

The weight of the evidence establishes that Mr. Ingram commenced a medical leave of absence that he requested and that the employer approved effective December 14, 2011. The weight of the evidence indicates that Mr. Ingram continued on the approved medical leave of absence until April 13, 2012. The employer had not laid Mr. Ingram off and, accordingly, the employer did not comply with Mr. Ingram's repeated requests for documentation indicating that the employer had laid him off. Mr. Trempe's encouragement to Mr. Ingram that he take as much time as he needed to recover his voice did not effect a layoff. Mr. Ingram testified that he attempted to return to work part-time a couple weeks after he went off work and was rebuffed by Mr. Trempe, but Mr. Ingram's medical documentation indicates that Mr. Ingram had not been released to return to work. Mr. Ingram testified, and the evidence indicates, that he had decided at the end of March 2012 not to return to the employment. Mr. Ingram stopped calling in his absences and stopped providing the employer with medical documentation to support his need for time off. The last medical documentation Mr. Ingram provided to the employer indicated he could return to work two weeks beyond March 30, 2012. That would place the return to work date, pursuant to Mr. Ingram's health care provider, at April 13, 2012. Mr. Ingram did not return to work or provide additional medical documentation to support his continued need for time off. The weight of the evidence establishes that Mr. Ingram voluntarily quit by failing to return to work at the end of an approved leave of absence.

The weight of the evidence fails to establish a causal connection between Mr. Ingram's loss of his voice and his work duties. Mr. Ingram's primary care physician specifically avoids signing on to any such conclusion in the letter dated June 13, 2012. Though Mr. Ingram was also evaluated and treated by an otolaryngologist, an ENT specialist, Mr. Ingram did not present any documentation from the specialist to establish a causal connection between the work and loss

of voice. The weight of the evidence also fails to establish that the employment aggravated Mr. Ingram's voice issue. Instead, the evidence indicates the voice issue arose, took Mr. Ingram off work, was sufficiently resolved so that Mr. Ingram could return to work, but that Mr. Ingram did not in fact return to work.

Mr. Ingram's overstatement of Dr. Huante's June 13 nuanced position in Mr. Ingram's own letter of June 14, along with other factors, provokes a healthy skepticism concerning Mr. Ingram's assertion that his voice condition prevented him from continuing in the employment. The administrative law judge noted that Mr. Ingram had no difficulty speaking, and the administrative law judge had no difficulty hearing Mr. Ingram, during a hearing that lasted an hour and 53 minutes. Mr. Ingram presents the first case the administrative law judge has seen wherein a claimant employed in telephone work asserted that the work *caused* the worker to lose his or her voice. Mr. Ingram may not have considered that the administrative law judge is himself engaged in extensive telephone work. Mr. Ingram has not presented sufficient evidence to establish that the lingering issues with his voice prevented him from returning to the employment. Nor has Mr. Ingram presented sufficient evidence to indicate that a doctor recommended that he leave the employment.

The administrative law judge concludes that Mr. Ingram voluntarily quit the employment without good cause attributable to the employer effective April 13, 2012. Accordingly, Mr. Ingram is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Ingram.

DECISION:

The Agency representatives June 13, 2012, reference 01, decision is modified only insofar that the administrative law judge concludes there was not a medical basis for the quit and that the quit was not based on the advice of a licensed and practicing physician. The claimant voluntarily quit the employment without good cause attributable to the employer. 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, provided he is otherwise eligible. The employer's account shall not be charged.

_____
James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

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