

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRENCE T DUVE**  
Claimant

**APPEAL NO. 12A-EUCU-00025-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**A-LERT**  
Employer

**OC: 10/02/11**  
**Claimant: Appellant (1)**

Section 96.5-1-d - Voluntary Quit for Medical Reasons

**STATEMENT OF THE CASE:**

Terrence Duve (claimant) appealed a representative's January 20, 2012 decision (reference 05) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with A-Lert (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 20, 2012. The claimant participated personally. The employer participated by Brenda Wooten, Employee Services Assistant.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 13, 2011, as a full-time laborer. The claimant requested and was granted medical leave from August 20 through October 14, 2011. As a condition of his leave the claimant was to return to work on October 14, 2011, and provide a doctor's note indicating he could return to work. The claimant did not return to work on October 14, 2011. The employer assumed the claimant had quit work on October 17, 2011. The claimant talked to his bosses at some point. The claimant remembers the bosses telling him that he did not have a job any longer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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.

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).

The claimant left work due to a medical condition under the advice of his physician. The employer consented to his leaving. The claimant has failed to provide the employer with certification that he had recovered. In addition the claimant has failed to offer his services to the employer on the day the employer and claimant agreed he would return to work. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the employer's testimony to be more credible. The claimant was unable to provide a date that he spoke to his "bosses." The administrative law judge can only surmise that the date was after October 14, 2011.

**DECISION:**

The representative's January 20, 2012 decision (reference 05) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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