IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RICKIE L GUERIN
Claimant

MARK LINDNER CONSTRUCTION
Employer

APPEAL NO: 12A-UI-02999-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/29/12
Claimant: Appellant (4)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Rickie L. Guerin (claimant) appealed a representative's March 22, 2012 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Mark Lindner Construction (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 10, 2012. The claimant participated in the hearing. Mary Jane Lindner appeared on the employer's behalf. 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.

FINDINGS OF FACT:

The claimant started working for the employer in the spring of 1994. He worked full-time as a carpenter in the employer's residential construction business. His last day of work was August 25, 2011.

On or about that date, the claimant was severely injured in an automobile accident in which he broke his back and suffered broken ribs and crushed lungs. As a result, he was unable to return to work for an extended period of time; he was restrained so as to have no physical movement for three months. Regrettably, during this period the employer, a sole proprietor, fell ill; he passed away on January 5, 2012. The employer had already begun the process of dissolving the business in December 2011, prior to the claimant being any position to attempt to return to work. As part of the dissolution process, while the business itself was not sold, its assets, specifically the construction equipment, were sold to one of the employer's three employees, who had decided to go into business for himself; the business dissolution was completed on February 14, 2012. On February 10, 2012, Ms. Lindner, as executor of her husband's estate, sent a letter to the claimant and the two other persons who had been most recently employed by the business, informing them that the business was closed and that the employee relationship was ended.

Until January 28, 2012, the claimant was still wearing a back brace and was not able to perform any work or to seek to return to work. As of January 28, he no longer needed to wear the brace, but had a 25-pound light-duty work restriction, under which he would not have been able to perform his usual work with the employer, although he could have performed other work. He was released from that light-duty work restriction as of February 24, 2012; however, since he had already been informed

that the employer's business was closed and that there was no job to which he could return, he did not attempt to return to work with the employer.

REASONING AND CONCLUSIONS OF LAW:

If the claimant effectively voluntarily quit, even temporarily, he would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Where the quit is for medical or health reasons, the quit is disqualifying at least until the claimant has recovered and seeks to return to work unless the medical or health issue is attributable to the employer. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b.

Where a claimant has been compelled to leave employment due to a medical or health issue not caused or aggravated by the work environment, the claimant is normally not eligible to receive unemployment insurance benefits until or unless the claimant then recovers, is released to return to work by his physician, and in fact does attempt to return to work with the employer. 871 IAC 24.25(35). Here, the claimant had not been fully released by February 10, 2012, but since the employer was dissolved and there was no job to which he could seek to return, a requirement that he seek to return to work with the employer would be futile and moot. Rather, in this specific situation, where the employer has been compelled to end any possibility of the claimant's return to the employment, from that point the standard which applies is whether the claimant is "physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991).

Here, as of February 10, 2012, the claimant was able to perform some work. His position was no longer available to him as of that date, so the temporary separation became permanent. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa1988); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787 (Iowa 1956). Even though the employer had a good business reason for dissolving and ending the claimant's employment prior to his ability to return to work, as of February 10, 2012 the separation is with good cause attributable to the employer and benefits are allowed as of the benefit week beginning February 12, 2012.

DECISION:

The representative's March 22, 2012 decision (reference 02) is modified in favor of the claimant. The claimant voluntarily left his employment with cause that became attributable to the employer. As of February 12, 2012, benefits are allowed, if the claimant 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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