IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

DERRICK L WILLIAMS Claimant **CRST VAN EXPEDITED INC** Employer	**APPEAL 19A-UI-01878-NM-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/03/19** **Claimant: Appellant (2)**

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 20, 2019, (reference 01) unemployment insurance decision that denied benefits based on his voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on March 18, 2019. Claimant participated and testified. Employer participated through Human Resource Specialist Kim Bateman.

ISSUE:

Is the claimant qualified for benefits based upon his medically-related separation from the employment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 6, 2017. Claimant last worked as a full-time lead driver. Claimant was separated from employment on February 21, 2018, when he voluntarily quit.

In February 2018 claimant was experiencing severe symptoms of diverticulitis. Claimant had seen the doctor regarding this condition before, after experiencing severe hemorrhaging. On February 24, 2018, claimant saw his doctor, who advised him that he needed to be put on medication, would need to follow a strict diet, be able to move about, and have access to a restroom whenever he needed to use one. The doctor also indicated, if these measures did not work claimant may need surgery and that a failure to follow these recommendations could result in serious hemorrhaging, that may be life-threatening. Claimant had previously spoken to the employer about possible accommodations, such as having a dedicated route in his home state of South Carolina. The employer informed claimant it did not have any available dedicated routes in the area. As claimant could not be accommodated, and his work was making his medical condition worse, he felt he had to choice but to resign. Bateman testified the employer was aware claimant would have to resign, but an accommodation was not possible.

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)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.

871 IAC 24.25(35) provides:

> Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:
>
> (a) Obtain the advice of a licensed and practicing physician;
>
> (b) Obtain certification of release for work from a licensed and practicing physician;
>
> (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
>
> (d) Fully recover so that the claimant could perform all of the duties of the job.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

> "Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced

> separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Iowa Admin. Code r. 871-24.26(6)b provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (6) Separation because of illness, injury, or pregnancy.
>
> 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 claimant has not established that the injury was caused by the employment but did establish that the medical condition would be aggravated by the work duties. Furthermore, the treating physician specifically advised claimant that he needed to have ready access to a restroom and be able to move about in order to prevent serious, possibly life-threatening, symptoms of his condition. While a claimant must generally return to offer services upon recovery, subparagraph (d) of Iowa Code section 96.5(1) is not applicable where it is impossible to return to the former employment because of medical restrictions connected with the work. See *White v. Emp't Appeal Bd.*, 487 N.W.2d 342 (Iowa 1992). Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. *Shontz v. Iowa Emp't Sec. Comm'n*, 248 N.W.2d 88 (Iowa 1976). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. *Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787 (Iowa 1956).

Claimant's position as a long-haul driver did not allow for these conditions to be met. Claimant requested an accommodation, but none was available. The employer was aware claimant would likely have to resign without an accommodation. Because claimant's medical condition was aggravated by the working conditions, the decision not to return to the employment according to the treating medical professional's advice was not a disqualifying reason for the separation.

DECISION:

The February 20, 2019, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left the employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

_____
Nicole Merrill
Administrative Law Judge

_____
Decision Dated and Mailed

nm/rvs