

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN E CRUSE
Claimant

APPEAL NO. 09A-UI-19342-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARM FERTILIZER COMPANY
Employer

**Original Claim: 11/22/09
Claimant: Appellant (2/R)**

Section 96.5-1-d - Voluntary Quit for Medical Reasons
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

John Cruse (claimant) appealed a representative's December 18, 2009 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Farm Fertilizer Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 4, 2010. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate in the hearing.

ISSUES:

Whether the claimant is denied unemployment insurance benefits because he voluntarily quit work without good cause attributable to the employer.

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired in the spring of 2007 as a part-time seasonal laborer. The claimant suffered from a heart attack on April 10, 2009. His physician released him to return to work without any restrictions that would affect his work with this employer in August 2009. The restrictions related to over-the-road driving. The claimant returned to the employer and asked for work. No work was available.

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).

The claimant left work due to an injury under the advice of his physician. The employer consented to his leaving. The claimant has provided the employer with certification that he has recovered. In addition, the claimant has offered his services to the employer and the employer had no work available. The claimant has met the requirements of the statute and, therefore, is eligible to receive unemployment insurance benefits as of August 2009.

The next issue is whether the claimant was able and available for work. For the following reasons, the administrative law judge concludes he is as of August 2009.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was released to return to work without restrictions affecting his employment by his physician. He is considered to be available for work because his physician stated he was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits as of August 2009.

The issue of whether the employer is relieved of charges is remanded for determination.

DECISION:

The representative's December 18, 2009 decision (reference 02) is reversed. The claimant voluntarily left work without good cause attributable to the employer but has met the qualifications of the statute. Benefits are allowed as of August 2009. The claimant is able and available work as of August 2009. The issue of whether the employer is relieved of charges is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw