

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE ESTRADA ACOSTA
Claimant

APPEAL NO. 07A-UI-04426-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 03/25/07 R: 04
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jose Estrada Acosta (claimant) appealed a representative's April 23, 2007 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Team Staffing Solutions (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 17, 2007. The claimant was represented by John Allen, Attorney at Law, and participated personally through Susie Jacquez, Interpreter. The employer participated by Sarah Fiedler, Administrative Assistant Human Resources. The claimant offered one exhibit which was marked for identification as Exhibit A. Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant is denied unemployment insurance benefits because he voluntarily quit work without good cause attributable to the employer. In addition, 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 on December 28, 2006, as a temporary worker. He was assigned to work full-time at Mount Pleasant Foods. In February 2007, the claimant discovered he had heart issues and was scheduled for surgery on February 23, 2007. He informed the employer and his supervisor at his assigned work. Both understood the claimant's condition. On March 26, 2007, the claimant was released to return to work without restrictions. He contacted the employer when he received the release. The employer told the claimant he would have to wait 90 days for reassignment. The claimant filed for unemployment insurance benefits.

The testimony of the employer and claimant was inconsistent. The administrative law judge finds the claimant's testimony to be more credible because the employer's witness did not provide first-hand testimony.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not 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 illness under the advice of his physician. The employer consented to his leaving. The claimant was willing to provide the employer with certification that he has recovered, but the employer did not take his certification. In addition the claimant has offered his services to the employer. The employer had no work available. The claimant has met the requirements of the statute and, therefore, is eligible to receive unemployment insurance benefits.

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

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 in the hospital for surgery and later released to return to work without restrictions. He is considered to be available for work after March 26, 2007. The

claimant is not disqualified from receiving unemployment insurance benefits beginning March 26, 2007.

DECISION:

The representative's April 23, 2007 decision (reference 02) is reversed. The claimant did not voluntarily quit work without good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw