

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LEROY SQUARE
Claimant

RANDSTAD GENERAL PARTNER US LLC
Employer

APPEAL 15A-UI-13594-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/25/15
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available – Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Leroy Square (claimant) filed an appeal from the November 24, 2015 (reference 01) unemployment insurance decision that denied benefits based upon the determination he voluntarily quit his employment due to a non-work-related illness or injury; which was not for a good cause reason attributable to Randstad General Partner US, LLC. The parties were properly notified about the hearing. A telephone hearing was held on January 4, 2016. The claimant participated on his own behalf. The employer did not participate. Claimant's Exhibit A was received.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a forklift driver beginning on June 1, 2015 and his last day worked was October 8, 2015. The claimant is 6 foot 11 inches tall and has had back problems for years. On October 8, 2015, the claimant reported to the employer he was no longer able to drive a forklift as the forklift's lack of shocks and the posture needed to drive the vehicle exacerbated his back injury. His doctor advised him to quit his position as a forklift driver and find another occupation. The employer told the claimant that it did not have any other positions available for him. The claimant has not been released back to work by his physician to drive a forklift but he is currently seeking employment in an office position or other job that does not require forklift driving.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment for no disqualifying reason.

Iowa Code § 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.

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 for unemployment insurance benefits only that the medical condition was aggravated by the work duties; which are permanently prohibited by his medical restrictions. 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).

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

To be able to work, "[a]n individual must be 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. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The claimant's doctor has not limited him in his ability to perform any work, merely that of a forklift driver. The claimant is actively seeking employment although in another occupation. He is able and available for work as required.

DECISION:

The November 24, 2015 (reference 01) decision is reversed. The claimant voluntarily left the employment for no disqualifying reason. The claimant is also able and available for work. Benefits are allowed, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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