IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SUDERSHAN ADHIKARI
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO. 12A-UI-05917-L

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/22/12
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 14, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held on June 19, 2012 in Des Moines, Iowa. Claimant participated through interpreter Shweta Agreheri and was represented by Jennifer Donovan, Attorney at Law. Claimant's son Puspa Adhikari also participated. Employer participated through employment manager Eloisa Baumgartner. The parties waived fact-finding and notice on the issue of the separation. Claimant's Exhibits A and B were admitted to the record.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time production worker through May 18, 2012 when he quit. His last day of work was April 25, 2012. He injured his finger at work in the last week of February 2012. He had surgery the first week of April 2012, was kept off work one day and was then released to work with restrictions and physical therapy so he worked half days the second week of April 2012. On April 19, 2012 family doctor Angela Atzen D.O., gave him a release to return to work without restrictions but noted a medical appointment in Iowa City on April 24, 2012. (Claimant's Exhibit A, top half) Atzen referred him to Matthew Howard M.D. in Iowa City for a personal medical issue regarding his right leg on April 24. On April 25 he reported for work and was sent home for the non-work-related medical condition of his right leg since he did not provide a medical release to work from his Iowa City visit. (Claimant's Exhibit A, lower half) He was absent beginning April 26, 2012 and employer placed him on a personal medical leave of absence to return on May 7, 2012. Claimant did not return or communicate with the employer but received the May 10, 2012 letter requesting documentation for the period of absence and extended the leave period until May 14, 2012. No documentation was received and the employer started the no call-no show absence documentation. There was no communication between April 25 and May 18, 2012 or thereafter. He did not give the employer any medical information that said his right leg would or would not keep him from working after April 19

because the appointment was preliminary without a full examination. He did not communicate with Tyson about problems with getting the information from the doctors or delays in scheduling the next appointment for the full examination. Interpreters were available to assist claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is separated from the employment without good cause attributable to 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)).

Subsection d of Iowa Code § 96.5(1) provides an exception where:

> 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.

The statute specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is *fully* recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346; *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n.*, 468 N.W.2d 223, 226 (Iowa 1991) (noting the full recovery standard of section 96.5(1)(d)). In the Gilmore case he was not fully recovered from his injury and was unable to show that he fell within the exception of section 96.5(1)(d). Therefore, because his injury was not connected to his employment and he had not fully recovered, he was considered to have voluntarily quit without good cause attributable to the employer and was not entitled to unemployment benefits. See *White*, 487 N.W.2d at 345; *Shontz*, 248 N.W.2d at 91.

Claimant has not established that the right leg medical condition was work related, as is his burden; thus, he must meet the requirements of the administrative rule cited above. Although claimant argued he gave the employer Iowa City medical information to a man in health services the day after he received it, he did not provide a copy of the information and the employer credibly denies receipt. The employer's request for medical information and a full release is reasonable given the physical nature of claimant's production job. His failure to maintain communication with the employer and provide the requested information indicates job abandonment. Accordingly, the separation was without good cause attributable to the employer and benefits must be denied.

DECISION:

The May 14, 2012 (reference 01) decision is affirmed. Claimant separated from the employment without good cause attributable to employer. Benefits are withheld until such time as he works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs