IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHAEL J ADAIR
Claimant

WELLMAN DYNAMICS CORP
Employer

APPEAL NO. 08A-UI-00332-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/25/07 R: 03
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 31, 2007, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on January 28, 2008. Claimant participated. Employer participated through Amy Reed, Kris Silver, and Wendy Burkhead, and was represented by John Wilson of NSN Employer Services Inc. Claimant's Exhibit A was received.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant has been employed as a full-time utility worker since May 30, 2006, and he was injured at work on September 30, 2006, when he tore his left shoulder rotator cuff. He was released on October 3, 2007 with permanent restrictions according to the functional capacity evaluation (FCE) (Claimant's Exhibit A, pages 1 through 3) and spoke to Kris Silver about returning to work with light duty restrictions of lifting no more than 15 pounds occasionally, 8 hour days, and limited duty according to his pain or comfort levels. (Claimant's Exhibit A, pages 4 and 5) He worked a day and a half on October 8 and 9 with "light duty" assignments of painting, sweeping and cleaning, which was the lightest duty available. But those duties required him to work on ladders and carry five gallon buckets of paint. After claimant told him he was having difficulty standing on the ladder raising his arms to scrape paint off the ceiling, Dave Mullins said if he could not do the work Mike Dewey told him via Kris Silver to send him home. Employer agrees that there is no work available that would fit claimant's permanent restrictions. (Claimant's Exhibit A, page 6)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes, for the purposes of unemployment insurance compensation benefits, the claimant voluntarily left his 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.

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 § 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 § 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.

While a claimant must generally return to offer services upon recovery, subparagraph (d) of Iowa Code § 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. EAB*, 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. IESC*, 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. IESC*, 76 N.W.2d 787 (Iowa 1956).

Because claimant's medical condition and resulting restrictions were the result of a work injury and employer is not able to accommodate claimant's permanent work restrictions, the separation, whether temporary or permanent, is not disqualifying.

DECISION:

The December 31, 2007, reference 01, decision is affirmed. The claimant voluntarily left his employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw