

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANNY R HUNN
Claimant

APPEAL NO. 07A-UI-06650-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**OC: 06/03/07 R: 02
Claimant: Appellant (4)**

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.26(6) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 28, 2007, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 23, 2007. Claimant participated. Employer participated through Andre Smith. 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 was employed as a full-time temporary door miller at Wood Harbor until May 24, 2007, when he was hospitalized for a collapsed lung, which has not been determined to be a work-related injury. By the time he was released from the hospital on May 27, 2007, the assignment had ended. While on light duty, he did some clerical testing but no clerical work. When released for full work duties on June 25, 2007, he put himself back on the call list, but no work was available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no work was available to the claimant upon his release to return to work from a non-work related injury.

Iowa Code § 96.5-1 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.

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 24.26(6)b provides:

(6) Separation because of illness, injury, or pregnancy.

b. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The claimant's return to the employer to offer services after the medical recovery evinces an intention to continue working. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed as of June 25, 2007.

DECISION:

The June 28, 2007, reference 02, decision is modified in favor of the appellant. Claimant was separated due to a lack of work upon his full medical release. Benefits are allowed effective June 25, 2007, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw