

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY R STANTON
Claimant

APPEAL NO. 07A-UI-11091-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LE GRAND SANITATION
Employer

**OC: 11/04/07 R: 02
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Anthony Stanton (claimant) appealed a representative's November 30, 2007 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Le Grand Sanitation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 17, 2007. The claimant participated personally and through his wife and former co-worker, Carol Stanton. The employer participated by Victoria Keen, Bookkeeper/Secretary. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer and whether he was available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 29, 2006, as a full-time driver. On August 21, 2007, the claimant notified the employer that he had to have surgery for his back on August 23, 2007. The claimant provided the employer with the doctor's note concerning the surgery. Throughout his absence from work the claimant provided doctor's excuses to the employer. On November 5, 2007, the claimant contacted the employer about returning to work the following day. He was to be released to return to work without restrictions on November 6, 2007. The employer told the claimant that he had quit and there was not work available.

The claimant filed for unemployment insurance benefits with an effective date of November 4, 2007.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because he had an eye witnesses to the events surrounding his separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant 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 injury under the advice of his physician. He notified the employer of his absence. The claimant provided the employer with certification that he has recovered. In addition the claimant has offered his services to the employer. 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 ill and unable to work from August 21 through November 5, 2007. . He is considered to be unavailable for work for that period. The claimant is not disqualified from receiving unemployment insurance benefits beginning the week ending November 10, 2007.

DECISION:

The representative's November 30, 2007 decision (reference 01) is reversed. The claimant is eligible to receive unemployment insurance benefits beginning the week ending November 10, 2007.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css