

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY R POWELSON
Claimant

APPEAL NO. 14A-UI-08331-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 02/09/14
Claimant: Respondent (2-R)

Section 96.5-1(d) – Voluntary Leaving/Attempt to Return Upon Recovery

STATEMENT OF THE CASE:

L A Leasing, Inc. filed a timely appeal from a representative's decision dated August 7, 2014, reference 06, which held claimant eligible to receive unemployment insurance benefits finding that the claimant left work on May 20, 2014 because of illness or injury but after recovering, offered to return to work but no work was available. After due notice was provided, a telephone hearing was held on September 2, 2014. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Ms. Coleen McGinty, Unemployment Insurance Administrator.

ISSUE:

The issue is whether the claimant left his employment due to illness or injury and attempted to return after recovery.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Timothy Powelson was employed by the captioned employer from May 19, 2014 until May 20, 2014 when he left work due to a non-work-related injury. Mr. Powelson was assigned to work as a general laborer at the International Ingredient Corporation and was paid by the hour.

After Mr. Powelson left his assignment on May 20, 2014 due to a non-work-related injury, he subsequently contacted L A Leasing and left a voice message permanently quitting his job requesting that the employer mark his file as "inactive." The claimant has not attempted to return to work nor provided a release from his doctor since leaving his employment on May 20, 2014.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant left his employment due to a non-work-related illness or injury and later returned to work but no work was available due to lack of work. It does not.

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.

The evidence in the record establishes that Mr. Powelson was the moving party in ending the employment relationship initially on May 20, 2014 when he indicated that he could not continue his assignment due to a non-work-related injury. Mr. Powelson was told that he needed to obtain a doctor's release before returning to work. L A Leasing was subsequently contacted by Mr. Powelson by a voice message on June 5, 2014. At that time the claimant requested that his name be taken off the active employee list and the claimant indicated that it was his intention not to return to employment with L A Leasing. The employer has had no further contact with Mr. Powelson. After leaving work on May 20, 2014 for a non-work-related injury, the claimant has not returned to L A Leasing to offer his services to the company and has not submitted a doctor's statement to L A Leasing indicating that he has been released to return to employment.

For the reasons stated herein, the administrative law judge concludes that the claimant voluntarily left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects the claimant has received unemployment insurance benefits in the amount of \$1,056.00 for the weeks ending July 12, 2014 through August 2, 2014. The administrative law judge remands the issue to the Claims Division of whether the employer participated in the fact finding and whether the claimant is liable to repay the overpayment or the employer's account should be charged.

DECISION:

The representative's decision dated August 7, 2014, reference 06, is reversed. Claimant left employment without good cause attributable to the employer and did not offer to return to work after recovery. Claimant is disqualified from receiving unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit and is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount of \$1,056.00. The issue of whether the claimant must repay that amount or the employer should be charged based upon the employer's participation in the fact finding is remanded to the Claims Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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