

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT D BECHTOL
Claimant

APPEAL NO. 07A-UI-06127-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ATLANTIC STEEL ERECTORS LTD
Employer

OC: 05/06/07 R: 01
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 8, 2007, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 5, 2007. Claimant participated. Employer participated by Greg Abild, President, and Bobbi Barnholdt, Secretary Treasurer.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

The second issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant last worked for employer on October 20, 2006. Claimant went off work due to a work-related knee injury. Claimant was released from the work-related knee injury May 3, 2007. Employer could not accommodate the light-duty work release. Claimant, while off for the work-related knee issue, had surgery for non-work-related health issues. Claimant was release from the non-work-related medical condition May 28, 2007. The release does not indicate that claimant is able to perform gainful employment.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of a work-related injury. The employer was not able to accommodate the work restrictions caused by the work injury. This is a separation for cause attributable to employer.

Claimant was also off due to a non-work-related condition. Claimant has a doctor's work release that does not indicate what kind of work claimant can perform. Claimant cannot perform his steel erection work under the current medical restrictions, which are silent as to physical restrictions. Benefits shall be withheld effective May 6, 2007, because claimant is not able and available for work.

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 24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

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

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

DECISION:

The decision of the representative dated June 8, 2007, reference 01, is modified. Unemployment insurance benefits are allowed based on the separation; however, claimant is not otherwise eligible, because he is not able and available for work. Claimant is not able and available for work effective May 6, 2007.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw