

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OMAR Y OMAR
Claimant

APPEAL NO. 13A-UI-06490-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 04/14/13
Claimant: Appellant (5)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 14, 2013, reference 02, that concluded the claimant had voluntarily left employment without good cause attributable to the employer. A telephone hearing was held on July 9, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Rhonda Hefter participated in the hearing on behalf of the employer with a witness, Elaine Pruett. Exhibit A was admitted into evidence at the hearing.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer full time on an assignment as a sanitation worker at the Heintz plant from October 22, 2012, to April 4, 2013.

After April 4, 2013, the claimant has suffered from a non-work-related kidney condition that resulted in the claimant being hospitalized multiple times and required several procedures. He was hospitalized from April 7 to April 11, 2013. After an examination on May 13, 2013, he was scheduled for surgery on June 12, 2013. He underwent a surgery on June 12 that required him to be hospitalized through June 16. When he was discharged from the hospital he was on restricted physical activity for four weeks. During the periods when the claimant was not hospitalized, he was under restricted duty that prevented him from working in his job, including periods when he had tubes in his kidneys. The claimant was scheduled for another surgery on July 13, which will require a hospital stay.

The claimant has contacted the employer about returning to work in April, May, and June 2013. The employer required him to present a doctor's release showing he was able to perform his job

as a sanitation worker. The claimant tried to get his doctor's office to fax the statement, but the employer has never received a doctor's statement stating that the claimant was released to return to work by his doctor. There is no doctor's statement that states that the claimant had been fully released to return to work by his doctor. The claimant has never informed the employer that he has quit his job.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that individual is qualified to receive benefits if he: (1) left employment for medical reasons with the advice of a licensed and practicing physician, (2) notified the employer that he needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but his regular work or comparable suitable work was not available. Iowa Code § 96.5-1-d.

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

The statement completed by the claimant's doctor on June 19, 2013, states that the claimant suffered from a medical condition requiring multiple hospital admissions and several procedures over the last two months beginning with his admission on April 7. It states that his physical activity was limited. The condition was not work-related. The employer made a reasonable request to have the claimant provide a medical statement that he was able to perform his job as a sanitation worker. The employer never received the statement.

The claimant is not subject to a voluntary quit disqualification because he has not quit his job. The evidence, however, does not show the claimant was able to work from April 14 up through the time of the hearing.

If the situation has changed and the claimant is now capable of working, he should offer to return to work for the employer when recovery was certified by a licensed and practicing physician. If the employer does not have work for him, he should report to his local Workforce Development Center with his work release and request that the disqualification for being unable to work be removed.

DECISION:

The unemployment insurance decision dated April 14, 2013, reference 02, is modified with no change in the outcome. The claimant is ineligible to receive unemployment insurance benefits effective April 14, 2013, because he was unable to work. If circumstances have changed and the claimant believes he is not able to and available for work, he must contact his local Workforce Development Center and request that the disqualification be lifted.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css