

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEVIN E FRY**  
Claimant

**APPEAL NO. 08A-UI-02634-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 02-10-08 R: 03**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 6, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on April 2, 2008. The claimant did participate and was represented by Max Schott, Attorney at Law. The employer did participate through Darren Miller, Second Assistant General Manager, and was represented by Erik Fern, Attorney at Law. Employer's Exhibits One through Four were entered and received.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a helper in the yard and in the receiving area, full-time, beginning April 26, 2002, through February 8, 2008, when he voluntarily quit.

The claimant sustained a work-related injury that necessitated treatment of his left shoulder including surgery. The claimant was released to return to work on February 4, 2008 with work restrictions that included no pushing or pulling with his left arm. The claimant's previous job in the yard required that he use his left arm to push or pull, so he was no longer able to perform that job without violating his work restrictions. The claimant wanted to work in the yard, but the employer would not allow him to work in a job that violated his work restrictions.

The employer offered the claimant a job in the building materials area that the claimant admits complied with his work restrictions. The claimant did not want to work in the building area because he would have to use a computer, and because he was dyslexic, using the computer made him nervous. The claimant admitted that he would be able to do the job if he was given a little more time to perform the tasks. The employer was willing to give the claimant as much time as he needed to perform the building materials job. The claimant only tried the building material job for one hour before determining that he did not want to continue with the job.

The claimant wanted a job in the grocery department, but that job did not meet his work restrictions, because it would require he lift more than fifty pounds and overhead lifting.

The claimant's base pay in the building department was the same as when he was working in the yard. All full time employees, including the claimant, are required to have open availability for all store hours and shifts and no employee, including the claimant, was guaranteed a particular shift. The claimant would not have been paid the extra fifty cents per hour for driving a fork lift as he did in the yard, because no fork lift driving is required in the building area.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

The claimant was given a job in the building area that complied with his work restrictions but he chose not to take the job because he did not like the job. The claimant thought the building job would be too stressful for him due to his dyslexia. The employer was willing to give the claimant extra time to perform the functions of the job, so there was no time pressure put on the claimant by the employer. The claimant only performed the building material job for one hour before determining that it was not to his liking. The employer was required to follow the claimant's work restrictions and was not allowed to send the claimant back out into the yard to violate those restrictions. The administrative law judge concludes that the building job offered to the claimant did comply with his restrictions and the employer was going to give the claimant ample time to work at his own pace and speed to complete the job. The job was suitable for the claimant, as he was going to be allowed to work at his own pace. Every employee could identify tasks, elements, or aspects of their job that cause stress for them or was not to their liking. It is a fact of life that all jobs are not always easy or pleasant. The claimant only attempted the building job for one hour—it is hard to see how he could determine he would not be able to improve or master the job with more time. Under these circumstances, the administrative law judge is unable to conclude that the claimant's leaving was attributable to the employer. Benefits are denied.

#### **DECISION:**

The March 6, 2008, reference 02, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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