

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID G HEISLER
Claimant

APPEAL NO. 09A-UI-10031-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

“BAUER BUILT INC
“BAUER BUILT TIRE CTR
Employer

OC: 06/07/09
Claimant: Respondent (1-R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Bauer Built Tire Center filed a timely appeal from a representative's decision dated July 9, 2009, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on August 14, 2009. Although claimant submitted a telephone number, he was not available at the telephone number provided. The employer participated by J. Michael Scott, Center Manager.

ISSUE:

The issue is whether the claimant quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: David Heisler was employed by Bauer Built Tire Center from September 18, 2006 until June 1, 2009 when he voluntarily left employment due to a work-related illness or injury. Mr. Heisler held the position of full-time commercial tire service worker and was paid by the hour. His immediate supervisor was J. Michael Scott.

In March 2009, Mr. Heisler informed his employer that he would be required to have back surgery. The surgery took place on March 30, 2009 and he was released to return to work in mid May 2009 with a 50-pound lifting limitation.

Due to the nature of the work, Mr. Heisler was not allowed to return to work by Bauer Built Tire Center as the employer required a full release from the claimant's physician. When the claimant was not allowed to return to work due to what the claimant considered to be a work-related injury, he left the employment of Bauer Built Tire Center.

Mr. Heisler has subsequently filed a first injury report for a workers' compensation claim. It is unclear whether the claimant is or has been receiving temporary disability payments under the workers' compensation system.

It is the employer's position that since Mr. Heisler has filed a workers' compensation claim, he should not be receiving benefits both from Bauer Built Tire Center's account as well as through the workers' compensation system.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant voluntarily quit employment with good cause attributable to the employer based upon an illness or injury that was attributable to the employer. It does.

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 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.

The evidence in the record establishes that the claimant left employment when he was not allowed to return to work with a 50-pound lifting limitation after undergoing back surgery for a medical condition which the claimant attributed to his employment. When the claimant received a release to return to limited duty and was not allowed to return by the employer, the claimant left employment for reasons that were attributable to Bauer Built Tire Center.

The evidence in the record establishes that Mr. Heisler has filed a first injury report with the workers' compensation system.

871 IAC 24.13(3)d provides:

(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

d. Workers' compensation, temporary disability only. The payment shall be fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which the payment is paid.

The issue of whether the claimant is receiving temporary disability payments under the workers' compensation system which are deductible from his unemployment insurance benefits is remanded to the UIS Division for an investigation and the issuance of an appeal determination.

DECISION:

The representative's decision dated July 9, 2009, reference 01, is affirmed. The claimant voluntarily quit employment with good cause attributable to the employer. The issue of whether the claimant is receiving compensation for temporary disability under the workers' compensation system is remanded to the UIS Division for investigation and issuance of an appeal determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs