

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAWN P STERK**  
Claimant

**APPEAL NO. 12A-UI-15223-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RIVER VALLEY COOPERATIVE**  
Employer

**OC: 12/02/12**  
**Claimant: Appellant (2)**

Section 96.5(1) – Quit  
Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Shawn Sterk, filed an appeal from a decision dated December 2, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 30, 2012. The claimant participated on his own behalf and was represented by Adrien Knuth. The employer, River Valley Cooperative (RVC), participated by Operations Manager Tony Howell.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer and whether he is able and available for work.

**FINDINGS OF FACT:**

Shawn Sterk was employed by RVC from February 13, 2009 until November 26, 2012 as a full-time LP sales and delivery person. He was approved for FML because of a non-work-related medical condition. That 12-week period ended November 15, 2012, but the leave was extended for a short period because he had used his available vacation prior to going on FML.

He received a letter from the employer notifying him he was expected to return to work November 26, 2012, the end of the FML and if he was not able to return to work without restrictions, he would be terminated. Mr. Sterk confirmed this with Operations Manager Tony Howell and Human Resources Manager Nancy Hughes. As of November 26, 2012, he was still under restrictions from his doctor of not lifting more than 35 pounds. He was not able to do his job without violating that restriction.

That restriction remains in place as of the date of the hearing and the claimant remains under a doctor's treatment. Mr. Sterk has a high school diploma and his past work experience had involved concrete work, crop production the LP sales position. He cannot perform any of those jobs without violating the lifting restriction.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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 record establishes the claimant did not quit but was dismissed because he was not able to return to work without restrictions after his FML had expired. The dismissal was not for misconduct and the claimant did not willfully refuse to return to work. Disqualification may not be imposed.

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".

The claimant is not able and available to return to his regular employment without restrictions. He is not able to work in any of the areas which he has experience. But lifting restrictions of 35 pounds would not exclude him from other jobs requiring a high school education as long as they do not require heavy lifting.

**DECISION:**

The representative's decision of December 21, 2012, reference 01, is reversed. Shawn Sterk is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeyer  
Administrative Law Judge

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Decision Dated and Mailed

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