

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDY C PARRISH

Claimant

APPEAL NO. 13A-UI-03862-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COX MANUFACTURING COMPANY

Employer

OC: 03/03/13

Claimant: Appellant (1)

Section 96.5-1-d – Voluntary Quit for Medical Reasons

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Andy Parrish (claimant) appealed a representative's March 25, 2013 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Cox Manufacturing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 11, 2013. The claimant participated personally and through his wife, Brenda Israel. The employer participated by Robert Cox, President, and Shelly Groves, Office and Human Resources Manager. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 23, 2008, as a full-time welder. The claimant signed for receipt of the employer's handbook on March 30, 2012. The handbook indicates that employees are to notify the employer one hour before the start of each shift if they are going to be absent. The handbook also states that if an employee is absent without notice for three days, he is considered to have voluntarily quit work.

The claimant stopped working on November 8, 2012, due to a non-work-related back medical issue. He requested and was granted Family Medical Leave (FMLA) from November 8, 2012, through January 31, 2013. He had surgery on February 28, 2013. The employer knew the claimant was not at work due to medical issues but the claimant did not call in each day to report his absences after January 31, 2013.

On March 1, 2013, the employer sent the claimant a letter notifying him that he had exhausted all FMLA, vacation leave, and accrued sick leave. The letter asked the claimant to contact the employer immediately. The claimant did so and met with the employer on March 5, 2013. The

claimant showed the employer his doctor's release that allowed him to return to work with restrictions on March 5, 2013. The employer did not have any work for the claimant that met the restrictions. The employer told the claimant that he was separated from employment. The employer considered the claimant separated because he did not and could not return to work when his leave expired. On March 21, 2013, the claimant's physician released the claimant to return to work without restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code section 96.5-1-d means a complete recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to an injury under the advice of his physician. The employer consented to his leaving. As of March 5, 2013, the claimant had failed to provide the employer with certification that he had recovered. The claimant has failed to meet the requirements of the statute. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes he is.

871 IAC 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was released to return to work with/out restrictions by his physician. He is considered to be available for work because his physician stated he was able and available for work. The claimant is able and available for work.

DECISION:

The representative's March 25, 2013 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is able and available for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css