

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY S WARNSTAFF
Claimant

APPEAL NO. 07O-UI-00024-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS
Employer

**OC: 09/24/06 R: 04
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Jeffrey Warnstaff (claimant) appealed a representative's October 26, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because of his separation from work with Tyson Fresh Meats (employer). A hearing was held on January 22, 2007, following due notice pursuant to Remand Order of the Employment Appeal Board dated December 15, 2006. The claimant participated personally. The employer participated by Kris Travis, Employment Manager.

ISSUE:

Whether the claimant was denied unemployment insurance benefits because he voluntarily quit work without good cause attributable to the employer.

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 November 9, 2004, as a full-time production worker. The claimant suffered a non-work-related injury to his shoulder. The claimant was released to return to work by his physician with restrictions. The employer required the claimant to be released to return to work without restrictions before the employer would put the claimant back to work. The claimant took a leave of absence from August 28 through October 27, 2006. He filed for unemployment insurance benefits on or about September 24, 2006. The claimant was released to return to work without restrictions on or about October 28, 2006. The claimant returned to work on October 28, 2006.

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).

The claimant left work due to an injury under the advice of his physician. The employer consented to his leaving. The claimant provided the employer with certification that he has recovered and offered his services to the employer. The claimant returned to work. The claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's October 26, 2006 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs