

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH M SPATES**  
Claimant

**APPEAL NO. 10A-UI-17479-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMPS NOW HEARTLAND LLC**  
Employer

**OC: 10/31/10**  
**Claimant: Respondent (1-R)**

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 20, 2010 (reference 02) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on February 3, 2011. Claimant did not respond to the hearing notice instructions and did not participate. Employer participated through Cary Miller and Mary Burkett.

**ISSUE:**

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked in an assignment from March 22, 2010 and was separated from employment on April 22, 2010. He went on leave after being injured at the work assignment. On June 2 he called with a medical release to return to work without restrictions. Employer did not have work available at that time and urged him to call them again for work. He has not contacted the employer since then and employer considers him inactive. He is eligible for reassignment.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment for no disqualifying reason.

Iowa Code § 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.

871 IAC 24.25(35) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

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 the 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.

Since the claimant returned to work from the work-related injury without restriction and no work was available, the separation was with good cause attributable to the employer.

While the claimant was medically available for work he has not established that he was available for or making an active and earnest search for work, pursuant to Iowa Code § 96.4(3), by failing to contact the employer for potential work from the effective date of the claim year October 31, 2010.

**DECISION:**

The December 20, 2010 (reference 02) decision is affirmed. The claimant voluntarily left his employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

**REMAND:** The availability and work search issues delineated are remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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