

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY D HALL
Claimant

APPEAL NO. 12A-UI-02025-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASTERSON PERSONNEL INC
Employer

OC: 01/01/12
Claimant: Appellant (1)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 23, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on March 15, 2012. Claimant participated. Employer participated through Unemployment Operations Manager Jim Robertson and Recruiter Amanda Peterson. Employer's Exhibit 1 was admitted to the record.

ISSUE:

Was the claimant's separation from the employment with good cause attributable to employer and was he able to and available for work effective January 1, 2012?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant remains an employee and last worked full-time as a temporary general laborer assigned at Lund and was temporarily separated from the employment on December 19, 2011. On December 12 he reported a suspected work related injury on December 5 or 6, 2011. His last day of work was December 13, 2011. He reported the absences on December 14, 15, 16, and 19 and presented a medical excuse for December 12, 2011. (Employer's Exhibit 1, page 1) On December 19, he called to report that he would not be in for at least a week, as his leg pain was getting worse. The doctor kept him off work until MRI and x-ray results were received around December 20, 2011 showing a bulging disc pressing on a nerve resulting in leg pain. Steroids did not work to reduce inflammation. He has an appointment with a neurologist on April 20, 2012, who may determine work relatedness or aggravation of a preexisting medical condition as a result of that examination and will decide whether a cortisone shot or surgery is appropriate. On December 29, Branch Manager Brian Lewark called claimant about his work status and was told that the doctor was deciding whether he needs surgery or cortisone shots. On January 17, 2012, Lewark called claimant, who said he had a follow-up medical appointment on January 23 about how to proceed with the back issue. On January 26 claimant called to report he was on a new medication, that the doctor's office would fax information, and he would have another appointment on February 20. On January 30 claimant called to ask about

paperwork for the injury. He presented a medical note dated February 20, 2012 that restricts him from working until further notice. (Employer's Exhibit 1, page 2)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is temporarily separated from the employment without good cause attributable to employer.

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.

Iowa Code § 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".

Regardless of whether the medical condition is work-related or not, claimant was and is not able to work and has not been released to return to full work duties. Accordingly, the temporary separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The February 23, 2012 (reference 01) decision is affirmed. Claimant is temporarily separated from the employment without good cause attributable to employer. Benefits are withheld until such time as he works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible or until such time as he obtains a full release to return to regular duties without restriction, offers services to employer, and it has no comparable, suitable work available.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw