

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-03830-LT
OC 03-07-04 R 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the March 25, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 29, 2004. Claimant did participate and was represented by Max Pelzer, Attorney at Law. Employer did participate through Holly Hurd.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time fiberglass trimmer and demolder through March 11, 2004 when he quit. After an allergy test, claimant's physician, R. Maclean Smith, M.D., determined he has an allergy to mold and "excessive irritants, ex. too much fiberglass particles in the air" may

exacerbate that condition. Dr. Smith prescribed a nasal spray and improved ventilation. (Claimant's Exhibit A) Claimant gave the note to Scott Heeren, plant manager and told him he could not work there and asked for another job. There was no other work available that would not involve working around fiberglass. Scott Heeren suggested a facemask (white paper product with elastic band) but claimant had more trouble breathing with it. A respirator was offered and declined without trying it. Robert Hranac, M.D. released claimant to return to work without restriction on March 11, 2004. (Claimant's Exhibit B)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment 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.

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 section 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 section 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.

In medical resignations, the claimant must first give the employer notice of the problem and an opportunity to remedy it in order for the voluntary quit to fall within a qualifying separation. Suluki v. EAB, 503 N.W.2d 401 (Iowa 1993).

The claimant has not established that the injury was work related or aggravated, as is his burden. Although his physician wrote that fiberglass particles might irritate his allergy to mold, claimant did not attempt to use the offered respirator while at work. Thus, he must meet the requirements of the administrative regulation cited above. He did not present evidence in writing to the employer that the physician suggested leaving the employment. No work restrictions were in force other than avoiding particulates, which could have been mitigated by the use of a respirator. Employer attempted to work with claimant by offering to provide a respirator. Claimant's refusal to attempt its use rendered the quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The March 25, 2004, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

dml/kjf