

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY L MILLER
Claimant

APPEAL NO: 06A-UI-09209-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRAND FX BODY COMPANY
Employer

OC: 08/13/06 R: 02
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Jeffrey Miller (claimant) appealed a representative's September 6, 2006 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Brand FX Body Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 2, 2006. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate. The claimant offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

Is the claimant denied unemployment insurance benefits because he voluntarily quit work without good cause attributable to the employer? In addition is the claimant 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 or about August 2, 2006, as a full-time laborer. On February 2, 2006, the claimant was injured in a snowmobile accident. The injury was not work-related. The claimant worked until April 2006, when he was granted Family Medical Leave. The claimant was released to return to work with restrictions for the two-week period ending August 26, 2006. The employer did not have work available for the claimant unless he could provide an unrestricted release. The claimant provided a full release to the employer during the week ending September 2, 2006. The employer put the claimant back to work starting the week ending September 2, 2006.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds 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 has provided the employer with certification that he recovered and offered his services to the employer. The employer put the claimant back to work starting the week ending September 2, 2006. The claimant is presently employed by the employer.

For the following reasons the administrative law judge concludes the claimant was not able to work for the two-week period ending August 26, 2006.

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 not released to return to work without restriction for the two-week period ending August 26, 2006. He is considered to be unavailable for work for those two weeks. The claimant is disqualified from receiving unemployment insurance benefits for the two-week period ending August 26, 2006, due to his unavailability for work.

DECISION:

The representative's September 6, 2006 decision (reference 02) 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. In addition, the claimant is disqualified from receiving unemployment insurance benefits for the two-week period ending August 26, 2006, due to his unavailability for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs