

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM J CASIAS
Claimant

APPEAL NO. 14A-UI-05270-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS
Employer

OC: 03/30/14
Claimant: Appellant (1)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 18, 2014, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on June 19, 2014. The claimant did participate. The employer did participate through Sarah Fiedler, Human Resources Generalist.

ISSUES:

Is the claimant able to and available for work?

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last assigned to work at Weingard as an assembler full time beginning on May 13, 2013 through February 10, 2014 when he voluntarily quit the assignment to have carpal tunnel surgery. The claimant's physician told him that his carpal tunnel surgery was not due to a work-related injury thus the claimant has not filed a claim for workers compensation benefits.

The claimant was never told by anyone at Team Staffing Solutions that he was discharged and not eligible for any additional work. He was told by Heidi that when he had recovered from his surgery he should provide the employer with a full work release from his physician and he would be given additional assignments and put back to work. The employer keeps track of any and all contact made by their employees seeking additional work. The claimant never returned to the employer, Team Staffing Solutions, with a work release or gave them any indication that he wanted to return to work.

During the fact-finding interview held on April 17, 2014 the claimant indicated in front of Ms. Fiedler that he had been released by his doctor to return to work on March 28, 2014 but had not returned to Team Staffing Solutions seeking additional work. At the time of this hearing, the claimant still has not returned to the employer seeking additional work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective February 11, 2014 through March 28, 2014.

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".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The claimant had a non-work-related surgery that kept him from physically being able to work until March 28, 2014 per his treating physician's restrictions. The claimant was released to return to work without restrictions as of March 28, thus he is now considered able to and available for work.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the 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.

Iowa Admin. Code r. 871-24.25(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.

The claimant has not established that the injury was work related, as is his burden. Thus, he must meet the requirements of the administrative regulation cited above. Claimant has been released to return to full work duties but has not returned to the employer and offered to return to work. By failing to return to the employer and offer to go back to work, the claimant has indicated his intention is to no longer work for Team Staffing Solutions. Accordingly, the separation is without good cause attributable to the employer and benefits are denied.

DECISION:

The April 18, 2014 (reference 01) decision is affirmed. The claimant voluntarily quit 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. The claimant is not able to and available for work from February 11, 2014 through March 28, 2014.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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