

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS A WAMSLEY
Claimant

APPEAL NO. 07A-UI-00531-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FORREST & ASSOCIATE
Employer

**OC: 12/03/06 R: 02
Claimant: Appellant (2)**

871 IAC 24.1(113)a - Layoff

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 5, 2007, reference 04, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on January 31, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with witnesses, Blake Hoffmeister, and Kim Ogle. Ron Shannon participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant laid off due to lack of work?

FINDINGS OF FACT:

The claimant worked full time for the employer as a bricklayer from July 2006 to November 24, 2006. The claimant became ill on November 26 and was hospitalized on November 27.

The job foreman was notified on the evening of November 26 of the claimant's illness. The claimant's mother called to the job foreman on the morning of November 27 after the claimant was hospitalized. She called because the claimant was sedated and unable to call himself. The job foreman told the claimant's mother that he would make sure that the company was aware of the claimant's situation and that the claimant should call when he was again able to work. The claimant was released from the hospital on November 29.

The claimant was able to work as of December 5, 2006. He called and spoke to the project coordinator on the morning of December 5. He informed the project coordinator that he was able to return to work, but the project coordinator responded that there was no work available at that time and that when work was again available, he would be called.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for

work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. On the other hand, a claimant is not disqualified if he has been laid off due to lack of work. 871 IAC 24.1(113)a.

In this case, the claimant never voluntarily quit and was not discharged for misconduct. He was absent for legitimate medical reasons, properly notified the employer that he was hospitalized and would be unable to work. He immediately notified the employer when he was again able to work, but there was no work available. Even if the separation could be considered a voluntarily quit employment, he satisfied all the requirements of Iowa Code section 96.5-1-d, which provides that an individual is qualified to receive benefits if he: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that he needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but his regular work or comparable suitable work was not available.

DECISION:

The unemployment insurance decision dated January 5, 2007, reference 04, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs