

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK R YENOR**  
Claimant

**APPEAL NO. 10A-UI-10017-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARLETON LIFE SUPPORT SYSTEMS INC**  
Employer

**OC: 06/13/10**  
**Claimant: Appellant (1)**

Section 96.5-1-d – Voluntary Quit for Medical Reasons  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Mark Yenor (claimant) appealed a representative's July 9, 2010 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Carleton Life Support Systems (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 31, 2010. The claimant participated personally. The employer participated by Rob Baugous, Human Resources Director.

**ISSUE:**

The issue is whether the claimant is denied unemployment insurance benefits because he voluntarily quit work without good cause attributable to the employer. In addition whether the claimant is 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 December 5, 2007 as a full-time machinist. The claimant suffered a non-work-related injury. He worked off and on through April 2010. A licensed physician indicated the claimant could return to work with restrictions on May 20, 2010. The employer did not have restricted work for the claimant.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes 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 failed to provide the employer with certification that he has recovered. In addition the claimant has failed to offer his services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits. The claimant may requalify by returning to the employer with an unconditional release. The claimant could then receive benefits if regular work or comparable suitable work was not available.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes he is.

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 released to return to work with restrictions by his physician. He is considered to be available for work because his physician stated he was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:**

The representative's July 9, 2010 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is able and available for work.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs