**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES R ROGERS**
Claimant

**PER MAR SECURITY & RESEARCH CORP**
Employer

**APPEAL NO: 07A-UI-08926-DT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 08/12/07 R: 04**
**Claimant: Appellant (2)**

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.26-6-b – Work-related Illness or Injury

**STATEMENT OF THE CASE:**

James R. Rogers (claimant) appealed a representative's September 14, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Per Mar Security & Research Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 3, 2007. The claimant participated in the hearing and was represented by Steven Ort, attorney at law. Amy Goodwin appeared on the employer's behalf and presented testimony from one other witness, Heidi Rios. During the hearing, Claimant's Exhibits A, B, and C were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntary quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 21, 2005. He worked full time as a security officer at the employer's Burlington, Iowa industrial business client. His regular work schedule was 4:00 p.m. to 12:00 a.m. Monday through Friday. His last day of actual work was May 21, 2007.

On or about March 20, 2007 the claimant reported to his supervisor, Ms. Rios, that he had been experiencing eye irritation after getting blowing sand in his eyes while doing rounds on the property about a week prior. About March 28 he reported that he had subsequently also been exposed to some chemical vapors in an area of the plant and was experiencing additional eye irritation. As a result, some temporary accommodations were made so that he did not need to go into that specific area of the plant or climb stairs, given his current depth-perception vision problems.

The claimant had an underlying eye condition of glaucoma. On about May 21 the claimant reported to the employer that he was having an eye surgery on May 22, which the employer initially assumed was strictly for the underlying glaucoma. The claimant was therefore placed on FMLA (Family Medical Leave) pending his release after the surgery. The claimant subsequently advised the employer that the surgery was necessitated due to an infection which aggravated the underlying glaucoma, and that the infection was the result of the March sand and chemical vapor exposure. The employer's carrier had initially denied the claimant's application to have this treated as a workers' compensation claim, and that issue is currently separately under appeal.

As the employer considered the claimant to be off work due to a non-work-related injury or illness, it expected him to be able to return to work without restriction by the end of the 12-week FMLA period on August 13. On July 12 the claimant's doctor issued him a statement indicating that he could return to work. However, restrictions were imposed that "he should not work around moving heavy machinery, nor should his work require using stairs or narrow elevated passageways. He also should not be exposed to any chemicals." The doctor indicated to the claimant that these would likely be permanent restrictions. On July 13 the claimant presented this doctor's note to Ms. Rios, who then faxed it to Ms. Goodwin, the manager of employee benefits and workers' compensation. Ms. Goodwin received the note and left a phone message for the claimant later that same day; she indicated that the letter was not specific enough and that the restrictions were too stringent, so that the claimant would not be permitted to return to work.

The claimant did not follow up with the employer further before the expiration of the FMLA as he understood the employer's decision was final and because his restrictions were not significantly changed; the only change after the initial July 12 restriction was that the doctor modified the restriction against chemical exposure to be only "industrial" chemical exposure. However, even with that modification, the employer would not have permitted the claimant to return to work, particularly given the other restrictions regarding being around machinery or using stairs.

The claimant has presented a statement from his doctor in which the doctor provided his opinion that the claimant's workplace chemical exposure likely caused the bacterial infection in the claimant's right eye resulting in a loss of vision in that eye.

**REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit, he would not be eligible for unemployment insurance benefits unless it was for 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.

871 IAC 24.26(6)b provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (6) Separation because of illness, injury, or pregnancy.
>
> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
>
> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The claimant did not return to work after his leave of absence and is deemed to have voluntarily quit. 871 IAC 24.22(2)j(2). However, the claimant has satisfied the requirements of the statute and rule to demonstrate that for the purposes of this unemployment insurance proceeding his condition was aggravated by factors and circumstances directly connected with the employment. This finding is not binding on the pending workers' compensation litigation. Iowa Code § 96.6(4). The employer was unable or unwilling to provide reasonable accommodation in order to retain the claimant's employment. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's September 14, 2007 decision (reference 01) is reversed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs