IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

STEVE L HARRIS
Claimant

JELD-WEN INC
Employer

APPEAL NO. 07A-UI-01125-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12-31-06 R: 02
Claimant: Respondent (1)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 25, 2007, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on February 15, 2007. Claimant participated. Employer participated through Brad Harris and was represented by Rob Sturm, Attorney at Law. Jennifer Palmer and Nicole Smith were called as witnesses but did not participate. Employer's Exhibit 1 (13 pages) was received.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed from April 14, 1981 until December 29, 2006 when he quit upon the advice of his physician. He was working as a group manager in shipping as of June 11, 2006 when he had a heart attack. He was allowed to return to work in a light-duty office job with restrictions of limited working hours and limited stress on August 4, 2006. During the third week in August he was switched to payroll and weekly report duties and in early September he worked as human resources support through September 23, his last day of work. Claimant communicated with his physician about these various light-duty jobs. His work restrictions remained the same throughout this time period and through December 14, 2006.

His treating physician, Craig Stevens, M.D. and Craig Hoffman, P.A.C., recommended on or about October 3, 2006 that claimant not return to work for employer because the medical condition is "lifetime" in duration, the reduction of stress is an ongoing medical restriction associated with that condition, (Employer's Exhibit 1, pages 6, 9 and 10) and claimant was experiencing stress and excessive pressure even in the light-duty jobs. Claimant then met with employer during the week of October 5 and relayed the information that that doctor suggested he find other work because of stress level thresholds. The parties agreed his salary continuation (short term disability) and health insurance benefits would continue until December 12, 2006 and the Family Medical Leave Act (FMLA) coverage was extended to December 29, 2006.

Claimant anticipates early retirement payments solely based upon his contributions in June 2007 and from the company contributions beginning in 2012.

While claimant had no formal work restrictions as of mid-December 2006 he would still not have been able to work in payroll for this employer but is seeking jobs with less stress such as cashier at Wal-Mart or an implement store or a custodial position at Grinnell College.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment for no disqualifying reason.

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 24.25(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 § 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 § 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 caused by the employment but did establish that the medical condition would be aggravated by the stress of work duties, which are permanently prohibited by the medical restrictions. Furthermore, the treating physician specifically advised claimant to find other employment.

While a claimant must generally return to offer services upon recovery, subparagraph (d) of Iowa Code § 96.5(1) is not applicable where it is impossible to return to the former employment because of medical restrictions connected with the work. See *White v. EAB*, 487 N.W.2d 342 (Iowa 1992). Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. *Shontz v. IESC*, 248 N.W.2d 88 (Iowa 1976). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. *Raffety v. IESC*, 76 N.W.2d 787 (Iowa 1956).

Because claimant's medical condition was and would be aggravated by the stress of the working conditions, claimant's decision to not return to the employment according to his physician's advice was not a disqualifying reason for the separation. Benefits are allowed.

DECISION:

The January 25, 2007, reference 01, decision is affirmed. The claimant voluntarily left his employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css