

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIE G PERKINS
Claimant

APPEAL NO. 15A-UI-00235-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 12/14/14
Claimant: Appellant (3)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Willie Perkins filed a timely appeal from the January 2, 2015, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that he had voluntarily quit due to a non-work-related medical condition. After due notice was issued, a hearing was held on January 29, 2015. Mr. Perkins participated. Colleen McGuinty represented the employer and presented additional testimony through Ashley McMeen. Exhibits A through E were received into evidence.

ISSUES:

Whether Mr. Perkins separated from the employment for a reason that disqualifies him for benefits.

Whether Mr. Perkins has been able to work and available for work within in the meaning of the law since he established his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Willie Perkins performed full-time work for L A Leasing, Inc./Sedona Group in an assignment at Rock-Tenn in Iowa City. Mr. Perkins began the assignment in 2013 and last performed work in the assignment in November 2014. At that point, Mr. Perkins went off work for what was later diagnosed as colon cancer. Mr. Perkins provided the employer with a series of doctor's notes to cover his absences leading up to December 12, 2014. On that day, Mr. Perkins saw his surgeon and the surgeon took Mr. Perkins off work until further notice. Mr. Perkins provided the note to the employer. The employer told Mr. Perkins at that time that he was welcome to return when he regains his health. The surgeon has not released Mr. Perkins to return to work. At the time of the January 29, 2015 appeal hearing, Mr. Perkins was in his fourth week of radiation and chemotherapy. Mr. Perkins is hoping to return to work at Rock-Tenn through the Sedona Group but it is still uncertain whether he will be medically able to perform that work or any other work. Mr. Perkins has not applied for any other employment since he established his claim for benefits and is not able to go out and search for other employment.

REASONING AND CONCLUSIONS OF LAW:

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.

Workforce Development rule 817 IAC 24.26(6) provides as follows, separation because of illness, injury, or pregnancy;

a. Non-employment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record indicates that Mr. Perkins separated from the employment due to a non-work related medical issue upon the advice of a licensed and practicing physician. The medical issue necessitated his separation from the employment. The law deems the separation a voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Perkins is disqualified for benefits unless or until he follows one of the two paths set forth below. He could work in and be paid wages for insured work equal to ten times his weekly benefit amount. He would have to meet all other eligibility requirements. The second way Mr. Perkins could requalify for benefits is by recovering from his non-work-related illness, be released by his doctor to return to the employment without restrictions, return to the employer with proof of the full-release, and offer to return to work. If at that point, the employer declines to return Mr. Perkins to the employment, he will be eligible for benefits; provided he meets all other eligibility requirements.

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(1)a, (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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(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.

Iowa Admin. Code r. 871-24.23(1) and (35) 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.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The evidence indicates that Mr. Perkins has not been able to work or available for work within the meaning of the law since he established his claim for benefits. Mr. Perkins has been dealing with serious illness, had been taken off work by his doctor, continues under the care of the doctor, has not been released to return to work, and is essentially homebound aside from trips to the doctor. Because Mr. Perkins is not able to work and available for work within the meaning of the law, he is not eligible for benefits. The period of ineligibility began on the date the claim was effective, December 14, 2014, and continues at this time.

DECISION:

The January 2, 2015, reference 01, decision is modified as follows. The claimant has not been able to work and available for work within the meaning of the law since he established his claim for benefits and is not eligible for benefits. Benefits are denied effective December 14 2014, and the ineligibility continues at this time. The claimant voluntarily quit due to a non-work-related medical issue that necessitated his separation from the employment and separated upon the advice of a licensed and practicing physician. The claimant is disqualified for benefits unless or until he follows one of the two paths set forth below. He could work in and be paid wages for insured work equal to ten times his weekly benefit amount. He would have to meet all other eligibility requirements. The second way he could requalify for benefits is by recovering from his non-work-related illness, be released by his doctor to return to the employment without restrictions, return to the employer with proof of the full release, and offer to return to work. If at that point, the employer declines to return the claimant to the employment, he will be eligible for benefits; provided he meets all other eligibility requirements. For now, the employer's account has not been charged. The employer's account will only be charged if the claimant follows the second path of requalifying for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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