

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL YEAGER
Claimant

APPEAL NO. 08A-UI-11028-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

STANTON HEALTH CARE INC
Employer

**OC: 10-05-08 R: 01
Claimant: Appellant (1)**

Iowa Code Section 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 20, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 20, 2008. The claimant participated in the hearing. Jalene Truesdell, Administrator and Gordon Peterson, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE: The issue is whether the claimant voluntarily left his position due to a non-work-related injury or illness.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time dietary and housekeeping worker for Stanton Care Center from July 5, 2007 to July 18, 2008. He was suffering from non-work-related back and neck problems and was unable to work pursuant to medical advice from a treating physician after having back and neck surgeries. He had been off work since June 9, 2008, and on June 30, 2008, the claimant signed a leave of absence request stating that if he was unable to return to work by July 18, 2008, the parties would consider him a voluntary quit. He was not able to return to work by July 18, 2008, but was released for desk duty although the employer was unable to accommodate his restrictions. On September 22, 2008, he was released with a 50-pound lifting restriction but the employer did not have any work available. The claimant took a job with R & R Plumbing November 25, 2008, and received a full release to return to work December 15, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is separated from his employment 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.

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 section 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 section 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 was not eligible for FMLA and was not released to return to full work duties before his leave of absence expired July 18, 2008. The employer is not obligated to accommodate a non-work-related medical condition. By the time the claimant did receive a full release to return to work in December 2008 he had accepted other employment. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The November 20, 2008, reference 01, decision is affirmed. The claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as the

claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css