

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD L JONES
Claimant

APPEAL NO. 12A-UI-10799-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON RETIAL DELI MEATS INC
Employer

OC: 08/05/12
Claimant: Appellant (2-R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated August 30, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 6, 2012. The claimant participated personally. The claimant was represented by Dennis McElwain, attorney at law. The employer's representative notified the agency in writing that the employer would not be participating in the hearing. The record consists of the testimony of Richard Jones and Claimant's Exhibits A and B.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a mechanic for the employer at its plant in Cherokee, Iowa. The claimant was hired on April 20, 1966. His last day of work was July 31, 2012. The claimant was forced to quit his job because of a work-related injury to his left knee.

The claimant's work-related injury required a total knee replacement. This surgery was done on July 14, 2011. The claimant returned to work in September 2011. The claimant's job required him to walk on concrete and climb ladders. He had to crawl under machinery and squat in order to perform maintenance on the plant's machinery. The claimant was having increasing difficulty with pain in his left knee.

The claimant had an independent medical evaluation on April 10, 2012. (Exhibit B) The physician who performed the examination recommended that the claimant "should not engage in any activity requiring kneeling, crawling, squatting or repetitive climbing vertical ladders." (Exhibit B, p. 9) The claimant presented these restrictions to the employer. The employer would not accommodate the claimant. The claimant tried to continue working without restrictions. He was unable to tolerate the work and informed his employer that he had to quit.

REASONING AND CONCLUSIONS OF LAW:

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.

One of the most difficult issues in unemployment insurance law is eligibility for unemployment insurance benefits when there has been a medically related separation of employment. When an individual voluntarily quits his or her employment without good cause attributable to the employer, then benefits are not awarded. The analysis focuses on which party initiated the separation of employment. If the claimant initiates the separation of employment, then no benefits are awarded unless good cause is attributable to the employer. When an individual leaves his or her employment for medical reasons, the analysis is more nuanced and requires special attention to the reasons for the resignation.

The evidence in this is uncontroverted that the claimant made the difficult decision to leave his employment because he could not tolerate the demands of job. The condition in his right knee made his continued employment with this employer impossible. The most recent medical evaluation of the claimant's left knee produced work restrictions that would not be accommodated by the employer. The claimant tried to continue working, but he could not physically endure the pain levels that doing his job produced.

Iowa law states that if "factor and circumstances directly connected to the employment" aggravated the claimant's condition and "made it impossible for the employee to continue in employment because of serious danger to the employee's health," the separation of employment is an involuntary termination of employment and constitutes good cause attributable to the employer. Since the claimant was unable to work for the employer because he could not perform his job, his separation is deemed involuntary. Benefits are allowed.

The claimant's testimony and the medical report raise the issue of whether the claimant was able and available for work. This issue has not been considered by the Claims Division and

was not listed as an issue on the notice of hearing. The issue cannot be waived, as the employer had no notice and was not participating in the hearing. Accordingly, the issue of whether the claimant is able and available for work is remanded to the Claims Division for consideration.

DECISION:

The representative's decision dated August 30, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible. The issue of whether the claimant is able and available for work is remanded to the Claims Division.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw