

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JORDAN HENSCHIED
Claimant

APPEAL NO: 13A-UI-00673-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 12/16/12
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(35) – Non-Job Related Illness or Injury
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 15, 2013, reference 01, that held he voluntarily quit employment due to a non-work-related injury on September 23, 2012, and benefits are denied. A hearing was held in Des Moines, Iowa on March 26, 2013. The claimant, and Attorney, James Henscheid, participated. Ajah Anderson, Director of Operations; Nancy Richardson, HR Manager; and Marilyn Cook, C-Store Manager/Assistant HR Manager participated for the employer. Claimant Exhibits A & B and Employer Exhibit 1 were received as evidence.

ISSUE:

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record finds: The claimant worked for the employer as a part-time salad clerk at an Urbandale store location from July 1, 2012 to September 23, 2012. He left work due to illness and suffered a non-job-related injury (broken hip) that required medical treatment. The employer granted him a medical leave of absence.

During a rehabilitation period, claimant requested a job transfer to the employer's West Des Moines location to work as a clerk in the gas store operation. Claimant began training for the job on December 7, but he requested to discontinue it after incurring some pain on December 9. He had provided a doctor patient status report on December 5 that restricted him from lifting more than 25 pounds that precluded him from working the gas clerk job at that time.

Claimant provided the employer an updated patient status report on January 15 that modified the lifting restriction to 50-pounds but limited his work activity to eight-hours a day and avoid repetitive squatting kneeling pulling and bending. Claimant and employer agreed he could not work the gas station clerk job due to these restrictions.

The claimant agreed to return to work with the January 15 restrictions as an inside store clerk where he could have courtesy clerks help him when needed. He continues to work this part-time job through the date of this hearing and he has not received an unrestricted work release as of the date of this hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 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.

Iowa Code section 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".

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 administrative law judge concludes claimant voluntarily left employment without good cause attributable to the employer on September 23, 2012 due to a non-job-related illness and injury.

The administrative law judge further concludes the claimant had not fully recovered from his injury in order to be able and available for his job duties as of December 16, 2012, and benefits are denied.

The September 23 employment separation due to a non-job-related illness and injury is disqualifying based on the doctor imposed work restrictions that precluded claimant from working as a salad store clerk.

The employer accepted claimant's job transfer to gas station clerk at another store location and allowed him to participate in training during his rehabilitation period December 7 & 9. When he was unable to continue training for that job and unable to perform those job duties based on a December 5 patient status report he continued on leave status pending recovery.

The January 15 doctor patient status report modified the work restrictions but the 50-pound lifting restriction with repetitive work activity limitations precluded him from working the gas station clerk job.

The employer offered and claimant accepted an in-store checker job that both sides agreed claimant could perform with the help of courtesy clerks and he returned to employment on January 22.

Claimant is not eligible for benefits for the period from the effective date of his claim (December 16, 2012 to January 22, 2013) because he had not fully recovered and received an unrestricted medical work release that would allow him to perform the gas station clerk job.

DECISION:

The department decision dated January 15, 2013, reference 01, is affirmed. The claimant voluntarily left without good cause attributable to the employer on September 23, 2012, and he was unable to perform work without restriction(s) until his return on January 22, 2013. Benefits are denied.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/tll