

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOEY D BEARD

Claimant

APPEAL 14A-UI-12935-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

OC: 11/16/14

Claimant: Respondent (2)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
871 IAC 24.10 – Employer Participation in the fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the December 9, 2014, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 5, 2015. Claimant did not participate. Employer participated through Charlene Horch, On-site Manager.

ISSUES:

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was last assigned to work at Associated Material full-time beginning on August 18, 2014 through November 26, 2014 when he voluntarily quit.

The claimant reported on November 25 that he would not be into work the following three or four weeks as he was going to have back surgery on November 26. The claimant has never returned to offer his services to the employer for any other type of work or work assignment. Continued work assignments were available for the claimant if he is able to work. The claimant was off work due to a personal medical condition.

The representative for the employer intended to participate in the fact-finding interview but her father had a stroke and she needed to leave to be with him. She arranged for another one of the employer's representatives to cover for her, but she could not get anyone at Iowa Workforce Development to respond to her request to change the contact person for the fact-finding interview. The employer did not participate only because IWD would not get the contact person changed so they could participate.

Claimant has received unemployment benefits since filing a claim with an effective date of November 16, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is temporarily separated from the employment without good cause attributable to employer.

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.

Iowa Admin. Code r. 871-24.25(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.

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".

Claimant has not established that the medical condition was work related, as is his burden. Thus, he must meet the requirements of the administrative rule cited above. The claimant has not returned to the employer with a release from his physician indicating he has been released to return to full work duties and employer is not obligated to accommodate a non-work-related medical condition. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

Additionally, the claimant has not established that he is able to and available for work since his back surgery. Under these circumstances he is not considered able to and available for work effective November 16, 2014.

DECISION:

The December 9, 2014 (reference 03) decision is reversed. Claimant is temporarily separated from the employment without good cause attributable to employer. Benefits are withheld until such time as he works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible or until such time as he obtains a full release to return to regular duties without restriction, offers services to employer, and it has no comparable, suitable work available. The claimant has been overpaid unemployment insurance benefits in the amount of \$2191.00 and he is obligated to repay the agency for those benefits. The employer did participate in the fact-finding interview and their account shall not be charged.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs