

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE V MACHADO

Claimant

APPEAL NO. 14A-UI-04950-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC

Employer

OC: 04/20/14

Claimant: Appellant (3)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Jose Machado filed a timely appeal from the May 9, 2014, reference 01, decision that disqualified him for benefits based on an agency conclusion that he voluntarily quit without good cause attributable to the employer. After due notice was issued, a hearing was held on June 2, 2014. Ms. Machado participated. Emmanuel Maciel represented the employer. Exhibit A was received into evidence.

ISSUES:

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

Whether Mr. Machado has been able to work and available for work since he established his claim for benefits.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Team Staffing Solutions, Inc., is a temporary employment agency. On September 9, 2014, the employer placed Mr. Machado in a full-time, temporary work assignment at a warehouse facility in Muscatine. The work required that Mr. Machado lift items weighing an average of 40 pounds and use his arm to operate a drill press. Mr. Machado last performed work in the assignment on January 7, 2014. Mr. Machado has suffered from arthritis for the last five years. Mr. Machado sought medical evaluation and treatment for pain in his shoulder on January 7, 2014. Mr. Machado's doctor subsequently released Mr. Machado to return to his full duties on January 19, 2014. Mr. Machado worked for an hour that day and then told the employer he could not perform the work required in the assignment. Thereafter, Mr. Machado did not return to the assignment. Mr. Machado's decision to separate from the assignment at that time was not based on the advice of his doctor, who had released him to return to work.

Mr. Machado established a claim for benefits that was effective April 20, 2014. By that time, Mr. Machado's doctor had imposed a 5-10 pound lifting restriction, had referred Mr. Machado for an MRI and had advised Mr. Machado that he will likely need surgery. Mr. Machado has not undergone the MRI or had the surgery.

At the time of the hearing, Mr. Machado could identify only two employer contacts since he filed his claim for benefits.

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. Nonemployment 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. Machado voluntarily quit the full-time work assignment due to a health issue. Mr. Machado has presented insufficient evidence to establish that it was necessary for him to leave the assignment on January 19, 2014. Mr. Machado's doctor had released Mr. Machado to perform the work. Thus, the decision to leave the assignment was not based on the advice of a doctor. Mr. Machado's voluntarily quit was without good cause attributable to the employer. Accordingly, Mr. Machado is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

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.

The evidence in the record indicates that Mr. Machado has not been able to work and available for work since he filed his claim. At the time Mr. Machado established his claim, months after he left the employment, he was subject to medical restrictions that included a lifting restriction. He had been referred for an MRI and had been told that he likely needed surgery. At the time of the hearing, Mr. Machado had not undergone the MRI or the surgery. Mr. Machado has not presented any medical documentation to indicate that he is able to perform any type of work since he established his claim for benefits. Mr. Machado had made minimal job contacts since he filed his claim. This further indicates that Mr. Machado has not been available for work since he filed his claim. Benefits are denied effective April 20, 2014.

DECISION:

The claims deputy's May 9, 2014, reference 01, decision is modified as follows. The claimant voluntarily quit the employment on January 19 2014, without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged. The claimant has not been able and available for work since he established his claim for benefits. Benefits are denied effective April 20, 2014.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs