

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KALEB GRAHAM

Claimant

APPEAL NO: 14A-UI-04978-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HANIG CONSTRUCTION INC

Employer

OC: 12/29/13

Claimant: Appellant (2)

Iowa Code Section 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.26(6) – Separation Due to Illness or Injury
Iowa Code Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 18, 2014, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 3, 2014. The claimant participated in the hearing. Frank Hanig, Owner, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on February 18, 2014. The claimant did not receive the decision and was unaware of the representative's decision denying benefits until he received the representative's decision stating he is overpaid benefits in May 2014. Under these circumstances, the administrative law judge concludes the claimant's appeal must be considered timely.

The claimant was employed as a full-time laborer for Hanig Construction from October 11, 2013 to December 20, 2013. The claimant was injured off the job and was unable to work pursuant to medical advice from a treating physician from October 12 through December 20, 2013. Upon the full medical release by his doctor December 20, 2013, the claimant called the employer on his way home from the Mayo Clinic and offered his services, but no work was available as the employer had decided to terminate his employment December 1, 2013, because, with one exception, the claimant was only communicating with him through the employer's wife, who worked at the coop.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no work was available to the claimant upon his release to return to work from a non-work-related injury.

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 96.5(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 24.26(6)b provides:

- (6) Separation because of illness, injury, or pregnancy.

b. Non-employment 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.

The claimant's return to the employer to offer services after the medical recovery evinces an intention to continue working. Therefore, the separation was attributable to a lack of work by the employer. Consequently, the administrative law judge must conclude the claimant was discharged for no disqualifying reason. Therefore, benefits are allowed.

DECISION:

The February 18, 2014, reference 02, decision is reversed. The claimant's appeal is timely. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css