

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 05A-UI-07954-LT
OC: 06-26-05 R: 01
Claimant: Appellant (5)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code §96.4(3) - Able and Available
Iowa Code §96.5(1)d - Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the July 25, 2005, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on August 19, 2005. Claimant did participate. Employer did participate through Shari Dykema.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a part-time laundry worker. He quit his job on June 18, 2005 because his doctor suggested he do so to avoid a relapse of an illness. He returned to work on July 17 for one day and then more regularly after August 5 but still not at the level he worked before June 18. Continued work was available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with good cause attributable to the employer but was not able to work.

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 24.25(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.

While a claimant must generally return to offer services upon recovery, subparagraph (d) of Iowa Code §96.5(1) is not applicable where it is impossible to return to the former employment because of medical restrictions connected with the work. See, White v. EAB, 487 N.W.2d 342 (Iowa 1992). Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. Shontz v. IESC, 248 N.W.2d 88

(Iowa 1976). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. Raffety v. IESC, 76 N.W.2d 787 (Iowa 1956).

The claimant has not established that the injury was caused by the employment but did establish via his physician that the work may cause a relapse of his medical condition and the treating physician specifically advised claimant not to work at that point.

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".

However, since claimant was not medically available to work benefits are denied for the one week ending July 2, 2005.

DECISION:

The July 25, 2005, reference 02, decision is modified without change in effect. The claimant voluntarily left his employment with good cause attributable to the employer but was not able to work the one week ending July 2, 2005.

dml/tjc