

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BILL R KIRKMAN
Claimant

APPEAL 15A-UI-14184-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF D M
Employer

**OC: 11/08/15
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Bill Kirkman (claimant) filed an appeal from the December 14, 2015, (reference 02) unemployment insurance decision that denied benefits based upon the determination he voluntarily quit his employment due to a non-work related illness or injury which is not a good cause reason attributable to Manpower Inc. of D M (employer). The parties were properly notified about the hearing. A telephone hearing was held on January 15, 2016. The claimant participated on his own behalf. The employer participated through Branch Supervisor Kyra Knuth.

ISSUES:

Is the claimant able to and available for work?

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed in a full-time temporary position as a Shipping Clerk with the employer's client, Kreg Tool, beginning on April 28, 2015, and his assignment ended on September 29, 2015. On that day, the claimant was placed on restricted duty by his doctor due to a non-work related injury. He was unable to lift over five pounds. The claimant notified the employer who contacted the client and asked if it had a position available. Neither the client nor the employer had work available that met the claimant's work restrictions. On October 22, 2015, the claimant had surgery due to the non-work related injury. His doctor prohibited him from any work until December 16, 2015.

The claimant was released to full duty on December 16, 2015. He notified the employer that he was available for work, but the employer did not have any work available for him. The employer has not had work for him since. Due to another non-work related injury, the claimant learned on January 15, 2016 that his doctor has again restricted him from working for the following four weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not eligible for benefits from the week beginning September 27, 2015 through the week ending December 12, 2015 as he was not able and available for work and benefits are denied for that time period. The administrative law judge also concludes no work was available to the claimant upon his release to return to work from a non-work related injury and benefits are allowed after his release to work, provided he is otherwise eligible.

Is the claimant able and available for work?

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(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.

(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.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Since the claimant was unable to perform his work duties due to a personal injury and the employer is not obligated to accommodate a non-work related injury, he has not established his ability to or availability for work during the weeks beginning September 27, 2015 through the week ending December 12, 2015. The claimant was released back to work on December 16, 2015 and he was available to work the majority of that work week.

The claimant was notified on January 15, 2016 that he would not be able to work for four additional weeks. He is unable to work for the four weeks beginning January 17, 2016.

Did the claimant voluntarily quit his employment with good cause attributable to the employer?

Iowa Code § 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 § 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. 871-24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

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

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 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.

On December 16, 2015, the claimant was returned to work and he requested an assignment from the employer. 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 and benefits are allowed, provided he is otherwise eligible.

DECISION:

The December 14, 2015, (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant was not able to work and available for work effective September 23, 2015 through December 13, 2015. Benefits are denied for that time period. On December 16, 2015, after the claimant was released to work and learned there was no work available, he was laid off due to a lack of work. Benefits are allowed after that date, provided he is otherwise eligible. The claimant has learned he is not able to work the week beginning January 17, 2016 for the following four weeks. He is not eligible for benefits during that time period unless he provides medical evidence of his availability to his local workforce development office.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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