

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN W SHIVES

Claimant

APPEAL NO. 07A-UI-06610-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PERISHABLE DISTRIBUTORS OF IA LTD

Employer

**OC: 06/03/07 R: 02
Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 2, 2007, reference 02, that concluded he voluntarily left employment without good cause attributable to the employer. A telephone hearing was held on July 24, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. David Williams participated in the hearing on behalf of the employer with a witness, Leigh Walters.

ISSUE:

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

FINDINGS OF FACT:

The claimant worked full time as a warehouse supervisor for the employer from October 31, 1998, to January 22, 2007. After January 22, 2007, the claimant was on leave under the Family and Medical Leave Act (FMLA) due to ankle reconstruction surgery. The claimant was receiving short-term disability benefits. The claimant's medical condition was not caused or aggravated by conditions at work.

The claimant's FMLA leave was extended to May 1, 2007. After May 1, 2007, the human resources director informed him that the employer could not hold his job open for him any longer and the job would have to be advertised. He was informed that he could go on leave without pay until he was released to return to work and would be re-employed if there was a job available. The employer did not inform the claimant that he would be discharged.

The claimant voluntarily quit employment because he was not released to return to work as of May 1, 2007, and he did not want to request leave without pay. He was not forced to quit by his employer but instead did so voluntarily.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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.

At the point the claimant quit, he was not informed that he was terminated from employment. He was informed that he could continue on an unpaid leave and would be re-employed if the employer had work available when he was released to turn to work. He quit without good cause attributable to the employer.

Under Iowa Code section 96.5-1-d, an individual is qualified to receive benefits if he: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that he needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but his regular work or comparable suitable work was not available. The claimant has satisfied (1) and (2) above. The claimant testified at the hearing that he had been released by his doctor without restrictions effective July 20, 2007. There is no evidence, however, that the claimant has contacted the employer and offered to return to work yet. He remains disqualified unless he is requalified by earning ten times his weekly benefit amount in subsequent employment or reapplies after offering to return to work for the employer but suitable work is unavailable.

DECISION:

The unemployment insurance decision dated July 2, 2007, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, or he shows that he has satisfied the requirements of Iowa Code section 96.5-1-d.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs