

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JEFFERY W KLEPPE**  
Claimant

**APPEAL 22A-UI-02177-DG-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STRYTEN MANUFACTURING LLC**  
Employer

**OC: 12/05/21  
Claimant: Appellant (2)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated December 29, 2021, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 16, 2022. Claimant participated and was represented by Jon S. Geyer. Employer failed to respond to the hearing notice and did not participate. The administrative law judge took official notice of the administrative record including the fact-finding documents.

**ISSUE:**

The issue in this matter is whether claimant quit for good cause attributable to employer?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on October 1, 2021. Claimant had to leave the employment on that date because his work assignment was exacerbating his work-related injury.

Claimant began working for employer on January 15, 2018 as a full-time equipment operator. On or about October 24, 2020 claimant was injured at work. Claimant sought treatment, and he was later released back to work with restrictions.

Claimant returned to work sometime in September, 2021. Claimant was assigned to perform the same work tasks he had been doing prior to sustaining his injury at work. Claimant complained about the pain, but he was told that was the only work employer had available to him. Claimant noticed that there were other positions in the facility he could perform that would not cause pain to his injury, and he suggested those assignments. Claimant's requests were denied, and he continued working at the same job that had caused his injury.

Claimant continued with his treatment, and he followed his doctor's treatment plan. Claimant continue to experience pain, and his work assignment was exacerbating his work-related injury.

Claimant decided that he must resign from the employment on October 1, 2021. Claimant notified the employer that he had to leave the employment on that date because the employer would not put him on light duty, and his work assignment was causing extreme pain and discomfort.

### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge holds that the evidence has establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because his work assignment was exacerbating his 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 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 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.

Iowa Admin. Code r. 871-24.25(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.

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. Empl. 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)).

The statute provides an exception where:

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 Code § 96.5(1)(d).

Section 96.5(1)(d) specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is fully recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346; *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985); see also *Geiken, supra* (noting the full recovery standard of section 96.5(1)(d)).

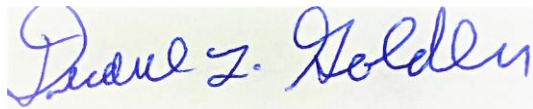
The statute specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is *fully* recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346; *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n.*, 468 N.W.2d 223, 226 (Iowa 1991) (noting the full recovery standard of section 96.5(1)(d)). In the *Gilmore* case he was not fully recovered from his injury and was unable to show that he fell within the exception of section 96.5(1)(d). Therefore, because his injury was not connected to his employment and he had not fully recovered, he was considered to have voluntarily quit without good cause attributable to the employer and was not entitled to unemployment benefits. See *White*, 487 N.W.2d at 345; *Shontz*, 248 N.W.2d at 91.

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. Emp't Appeal Bd.*, 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. Iowa Emp't Sec. Comm'n*, 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. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787 (Iowa 1956).

Because claimant's work-related injury was aggravated by his work assignment, and the employer would not provide light duty work, his decision to leave the employment was not disqualifying. Benefits are allowed.

**DECISION:**

The December 29, 2021, (reference 01) decision is reversed. The claimant voluntarily left the employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



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Duane L. Golden  
Administrative Law Judge

March 10, 2022  
Decision Dated and Mailed

dlg/mh