IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

THOMAS W FRAZIER
Claimant

WEST LIBERTY FOODS LLC
Employer

APPEAL NO. 08A-UI-08326-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/13/08 R: 04
Claimant: Respondent (5)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.26-6-b – Work-related Illness or Injury

STATEMENT OF THE CASE:

West Liberty Foods, L.L.C. (employer) appealed a representative's September 8, 2008 decision (reference 01) that concluded Thomas W. Frazier (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 30, 2008. The claimant participated in the hearing and was represented by James Hoffman, Attorney at Law. Tara Hall, Attorney at Law, appeared on the employer's behalf and presented testimony from two witnesses, Jean Spiesz and Michele Boney. During the hearing, Employer's Exhibits One through Five were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on January 24, 2005. He worked full time as a boxer in the employer's meat processing facility. However, since September 2007 he had been working a light-duty job due to a work-related injury to his left hand. His last day of work was July 15, 2008.

As of March 25, 2008 the claimant's doctor released him to return to work with a permanent restriction of 30 pounds with the left hand. The claimant is right-handed. Under the doctor's restriction the employer would not allow the claimant to return to his prior boxer position as it interpreted the doctor's restriction as, in essence, restricting him to no more than 30 pounds lifting in general, or at the least, if the claimant were to need to lift more than 60 pounds, assuming that the weight would be borne equally by the two hands so that it would exceed his restrictions. There were some occasions where a boxer might be required to move a pallet that could weigh 72 pounds, although it was not clear that being able to lift that much was one of the essential functions to the boxer position. The employer did not seek clarification from the doctor

as to what the claimant's total lifting restriction was or how he could allocate the weight between the two hands.

The claimant continued to work the light-duty position as the employer debated into what position he could be placed. On June 23 there was an initial discussion with the claimant in which the employer sought to place the claimant into the position of a molder. This position would have met his lifting restriction, however, the position would require that the claimant wear an encapsulated suit. He resisted this placement, asserting that he was claustrophobic and that wearing the suit would trigger claustrophobic attacks. The employer deferred action for the time being, and the claimant continued working his light-duty job.

On July 15 the employer again sought to place the claimant into the molder position, explaining that it was the only position available that met the claimant's lifting restriction and that he could no longer continue to work in the light-duty position the employer had created for his recovery from the work-related injury. The claimant reasserted that he could not accept the molder position as it would trigger his claustrophobia. The employer instructed the claimant to leave and reconsider his options, but maintained he could not return to the boxer position or to the light-duty work he had been doing.

On July 22 the employer sent the claimant a letter which he received on July 24 advising him that he could choose to accept the molder position, in which case he should report for work on July 28 at 3:00 p.m., but if he did not, the employer would assume he was quitting his employment. The claimant did not report at 3:00 p.m. on July 28, but did call in an absence; further, his doctor faxed the employer a statement that date confirming that the claimant could not wear a mask or anything over his face as was part of the protective suit required for the molder position as it would trigger his claustrophobia.

On August 8 the employer sent he claimant another letter which he received August 15 acknowledging the receipt of the doctor's faxed restriction applicable to the molder position. The employer further indicated that it had no open positions that would accommodate both the claimant's lifting restriction and his masking restriction, and that therefore the claimant's employment was ended.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Leaving employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician with notice to the employer is recognized as grounds that are good cause for quitting. Iowa Code § 96.5-1-d. For the quit to be attributable to the employer, factors or circumstances directly connected with the employment must either cause or aggravated the claimant's condition so as to make it impossible for the employee to continue in employment; the claimant "must present competent evidence showing adequate health reasons to justify termination [and] before quitting [must] 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." 871 IAC 24.26(6)b.

The claimant has satisfied these requirements. The employer was unable or unwilling to provide reasonable accommodation for both the lifting and the masking restrictions, which were both due to conditions either caused or which would be aggravated by factors of the employment, in order to retain the claimant's employment. "Good cause attributable to the

employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's September 8, 2008 decision (reference 01) is modified with no effect on the parties. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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