

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS E ROTTMAN
Claimant

APPEAL NO: 08A-UI-09770-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

**OC: 09/21/08 R: 03
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available
871 IAC 24.22(2)j – Leave of Absence
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:

Thomas E. Rottman (claimant) appealed a representative's October 15, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in connection with Cargill Meat Solutions Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 6, 2008. The claimant participated in the hearing. The employer received the hearing notice and responded by faxing a statement to the Appeals Section on November 3, 2008, indicating that the employer was opting not to participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit without good cause attributable to the employer? Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on April 23, 2007. He worked full time hanging pork bellies in the employer's meat processing facility. His last day of work was January 15, 2008. The claimant has Crohn's disease¹. In January 2008 the claimant had a flare-up of the condition, and his doctor ordered him off work. The claimant's doctor advised him that the flare up had been triggered by the fast-paced work of his position as well as the cold working conditions. When the claimant informed the employer of the doctor's advice, the employer gave the claimant paperwork for short-term disability, which he completed. His short-term disability ran out in approximately March. As the claimant's doctor was still advising him not to return to his prior employment, the claimant began calling in daily absences until approximately July. On

¹ "Crohn's disease is a chronic inflammatory disease of the intestines. Symptoms include abdominal pain and diarrhea, sometimes bloody, caused by inflammation of the intestines. Crohn's disease can be managed but not cured." <http://www.webmd.com/ibd-crohns-disease/crohns-disease/default.htm>

September 19, 2008 the employer sent the claimant a letter advising him that since he had not returned from his leave, his employment was deemed ended.

The claimant established an unemployment insurance benefit year effective September 21, 2008. His base period wages were all with the employer, and during that time he was working a minimum of 40 hours per week. As of the date of the hearing the claimant's doctor had released him for some work, but was still restricting him to no more than 30 hours per week.

REASONING AND CONCLUSIONS OF LAW:

In general, an employee who is only temporarily separated from his employment due to being on a leave of absence is not eligible for unemployment insurance benefits during the period of the leave, as it is treated as a period of voluntary unemployment. 871 IAC 24.22(2)j; 871 IAC 24.23(10). The law further provides that where an employee fails to return to employment after the end of a leave of absence, the employee has voluntarily quit the employment. 871 IAC 24.22(2)j. Here, the claimant did not return to the employer after his leave of absence, therefore, the claimant is deemed to have quit his employment.

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, however, factors or circumstances directly connected with the employment must either cause or aggravate 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 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 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Benefits are allowed, if the claimant is otherwise eligible.

For each week for which a claimant seeks unemployment insurance benefits, he must be able and available for work. Iowa Code § 96.4-3. To be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." Sierra v. Employment Appeal Board, 508 N.W.2d 719, 721 (Iowa 1993); Geiken v. Lutheran Home for the Aged, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). Therefore, the claimant need not be able to return to work in his prior position. However, an individual must still be available for work on the same basis on which the individual's wage credits were earned. 871 IAC 24.22(2). Since the claimant's wage credits were earned in full time employment, he needs to be released back as able to work full time hours in order to be "available to the same degree and to the same extent as when the wage credits were accrued." Id.

In order to demonstrate that he has been released to full time work, if the claimant receives such a release from his doctor, he should present a copy of that release along with a copy of this decision to a representative at his local Agency office, who should transmit the material to the Claims Section for appropriate review and action.

DECISION:

The representative's October 15, 2008 decision (reference 01) is modified in favor of the claimant. The claimant voluntarily left his employment with good cause attributable to the employer. The claimant was not able and available for work effective September 21, 2008 as he cannot yet work full time hours. He is therefore not eligible to receive unemployment insurance benefits unless or until he presents evidence he has been released for full time work.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs