

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW MENKE
Claimant

APPEAL NO: 14A-UI-01230-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID-STATES MECHANICAL SERVICES I
Employer

OC: 01/05/14
Claimant: Appellant (1)

Iowa Code Section 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 3, 2014, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 25, 2014. The claimant participated in the hearing. Danielle Stedman, Human Resources Manager, participated in the hearing on behalf of the employer. Claimant's Exhibits A through F were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left his position due to a non-work related injury or illness.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time laborer for Mid-States Mechanical Services from June 19, 2013 to August 26, 2013. He was having health issues regarding his sinuses and started experiencing severe dizziness and headaches and was unable to work pursuant to medical advice from a treating physician. He reported his symptoms of dizziness and migraines to the employer when he provided it with a note explaining he needed time off for an upcoming MRI with date to be determined and was told he could not return to work without a full release from his doctor. He did not provide the employer with any additional information about his health or condition and the seasonal job ended due to a lack of work September 16, 2013. The claimant did not receive a full medical release until September 18, 2013. He did remove scrap metal from the worksite for a third party employer September 18, 2013, but was not paid by this employer to do so.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is temporarily separated from his employment without good cause attributable to the employer.

Iowa Code section 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.

871 IAC 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 claimant was not released to return to full work duties prior to his seasonal job ending on September 16, 2013, and the employer is not obligated to accommodate a non-work-related medical condition. While the administrative law judge understands the claimant did not wish to quit his job, under Iowa law, situations such as this one are considered a voluntary leaving of employment. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The February 3, 2014, reference 02, decision is affirmed. The claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs