

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER A NELSON**  
Claimant

**APPEAL NO. 12A-UI-11217-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TSI ENTERPRISES INC**  
Employer

**OC: 01/22/12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 10, 2012 (reference 06) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on October 11, 2012. Claimant participated and was represented by Leanne Tyler, attorney at law. Employer participated through Claims Administrator Sarah Fiedler and Area Manager Charity Stone. Employer's Exhibit A was received. Claimant's Exhibits 1 through 3 were received.

**ISSUE:**

Was the claimant's separation from the employment, albeit temporary, with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed in a long-term, temporary, full-time assignment at Grain Processing Corporation as a general laborer. He began the assignment on March 14, 2012 and was temporarily separated from employment on August 2, 2012. He claimed a knee injury running up stairs at work on June 14, which is disputed as to work-relatedness. He reported the injury the following Monday to immediate supervisor Greg Bike and then reported it to Stone at TSI by telephone message. He told Lindsey Reese he did not think he needed to see a doctor. He first missed work on August 3 after Trinity Occupational Medicine physician Dr. Allen diagnosed a left knee meniscus tear according to the MRI on July 31. An orthopedic referral was suggested and he was released to work with a 20-pound lifting restriction, prohibition against climbing ladders, mostly sedentary work with self-paced standing and walking. Dr. Allen opined that the injury was not work-related because there was "No history of actual injury consistent w/ [with] results of pathology on MRI." (Claimant's Exhibit 3) The claimant did not obtain or present other medical evidence from an independent third-party physician or his personal physician finding the injury to be work-related or otherwise disputing Dr. Allen's opinion. The employer and the employer's client do not provide light duty work for non-work related medical conditions.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is temporarily separated from the employment without good cause attributable to 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 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't 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)).

Subsection d of Iowa Code § 96.5(1) 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.

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.

Given the sole medical etiologic determination of the examining physician that the injury is not work-connected, claimant has not presented medical evidence to contradict Dr. Allen's opinion and has not established that the medical condition was work-related, as is his burden. Thus, he must meet the requirements of the administrative rule cited above. He has not been released to return to full work duties and employer is not obligated to accommodate a non-work-related medical condition. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

**DECISION:**

The September 10, 2012 (reference 06) decision is affirmed. Claimant is temporarily separated from the employment without good cause attributable to employer. Benefits are withheld until such time as he works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible or until such time as he obtains a full release to return to regular duties without restriction, offers services to employer, and it has no comparable, suitable work available.

**Note to parties:** Any reference to the work relatedness of claimant's injury is specific to this unemployment insurance benefits determination only and is not binding on the issue of claimant's entitlement to workers' compensation benefits, if any. That issue falls within the authority of the Iowa Workers' Compensation Commissioner.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw