

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN A WRIGHT

Claimant

APPEAL NO. 15A-UI-00061-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INTERNATIONAL INC

Employer

OC: 12/07/14

Claimant: Appellant (1)

Section 96.5-1-d – Voluntary Quit for Medical Reasons

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Benjamin Wright (claimant) appealed a representative's December 24, 2014, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Manpower International (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 16, 2015. The claimant participated personally. The employer sent a letter to IWD indicating its decision not to participate in the hearing. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary agency. The claimant was hired on October 28, 2014, as a full-time production worker assigned to work at Color Web. The claimant's assignment required him to stand during the day and, due to his stature, the claimant had medical problems.

On December 3, 2014, the claimant told the employer he went to the emergency room on December 2, 2014, for a bone spur on his right foot. He described the pain and treatment in an email to the employer. On December 8, 2014, the claimant asked if the employer found other positions for him because his feet/ankles hurt. On December 9, 2014, the claimant told the employer he would quit if the employer did not find him a different position by 2:00 p.m. At 2:52 p.m. on December 9, 2014, the claimant quit his position so his feet could heal. The claimant did not consider this to be a work-related condition. The claimant did not provide any notes from his physician about his medical condition.

On December 30, 2014, the claimant's physician wrote a note indicating the claimant was unable to perform work requiring prolonged standing or walking. He could perform seated work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code § 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to an injury but not under the advice of his physician. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes he is.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was released to return to work with restrictions by his physician. He is considered to be available for work because his physician stated he was able and available for work. The claimant is able and available for work.

DECISION:

The representative's December 24, 2014, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is able and available for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs