

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICARDO J HERRERA
Claimant

APPEAL NO. 15A-UI-00348-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PERSONNEL STAFFING GROUP LLC
Employer

**OC: 12/07/14
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(35) – Attempt to Return to the Employer and Offer Services After Certified
Recovery
Section 96.4.3 – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated January 7, 2015, reference 01, which denied unemployment insurance benefits finding the claimant voluntarily quit work on May 1, 2014 because of a non-work-related illness or injury. After due notice was provided, a telephone hearing was held on February 4, 2015. Claimant participated. Participating on behalf of the claimant was Mr. John Graupmann, Paralegal, Legal Aid Society. Although duly notified, the employer did not respond to the notice of hearing and did not participate. Claimant's Exhibits One, Two, and Three were received into evidence.

ISSUE:

At issue is whether the claimant quit employment under disqualifying conditions and whether the claimant is able and available for work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Ricardo Herrera began employment with the captioned temporary employment service d/b/a DES Employment Services in December 2011. Mr. Herrera was assigned to work at the Alter Metal Company as a recycling picker. The claimant's last day of work was May 3, 2014.

On May 4, 2014, Mr. Herrera was seriously injured in a non-work-related motorcycle accident and hospitalized. DES Employment was informed of Mr. Herrera's accident and his inability to report for scheduled work because of the non-work-related accident.

After being seriously injured on May 4, 2014, Mr. Herrera underwent extensive hospitalization, the amputation of his ankle and rehabilitation. On December 1, 2014, Mr. Herrera was authorized to return to work by his physician with a limitation. On December 4, 2014, Mr. Herrera was certified by his physician as able to return to his regular work without

restrictions and Mr. Herrera provided the medical documentation to DES Employment Services and attempted to return to work. Although advertisements from the company appeared to indicate that the same work that Mr. Herrera had previously performed for the company was available, the employer did not allow Mr. Herrera to return to work and indicated no work was available to him.

Mr. Herrera delayed opening his claim for unemployment insurance benefits until he had been released by his physician. The claimant has actively and earnestly sought re-employment by contacting perspective employers each week that he claimed unemployment insurance benefits since opening his claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 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.

Iowa Admin. Code r. 871-24.25(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 evidence in the record establishes that Mr. Herrera was an employee of the captioned employer d/b/a DES Employment Services until May 4, 2014 when he suffered a non-work-related injury and was unable to work for an extended period. The evidence establishes that Mr. Herrera remained in contact with DES Employment Services throughout the time that he was off work due to his non-work-related injury and that on December 4, 2014, Mr. Herrera returned to the employer after being certified as fully recovered and able to work without limitations and offered his services. The evidence further establishes that no work was available to the claimant at that time from the employer.

The administrative law judge concludes based upon the evidence in the record that the claimant's separation from employment on December 4, 2014 was attributable to the employer under the provisions of 871 IAC 24.25(35).

The administrative law judge also concludes based upon the evidence in the record that the claimant has established that he is both able and available for work since filing his claim for unemployment insurance benefits with an effective date of December 7, 2014. Unemployment insurance benefits are, therefore, allowed beginning December 7, 2014, providing claimant has met all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated January 7, 2015, reference 01, is reversed. Claimant left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed effective December 7, 2014 provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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