IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

WILLIAM L FRANCK Claimant **ALTER TRADING CORPORATION** Employer	**APPEAL 17A-UI-07191-DB** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/18/17** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 10, 2017 (reference 01) unemployment insurance decision that found claimant was ineligible for unemployment benefits because he voluntarily quit work on June 20, 2017 because of a non-work related illness or injury. The parties were properly notified of the hearing. An in-person hearing was held in Davenport, Iowa on September 27, 2017. The claimant, William L. Franck, participated personally. Karen Carter-Franck participated as a witness on behalf of the claimant. The employer, Alter Trading Corporation, did not participate. Claimant's Exhibits A through C were admitted into evidence.

ISSUES:

Did the claimant voluntarily quit without good cause attributable to the employer?
Was the claimant discharged from employment for job-related misconduct?
Is the claimant able to work and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time for this employer from November 2, 1987 until June 20, 2017. Claimant was working for this employer as a machine operator. His job duties required operating various types of machines including but not limited to dump trucks, forklifts, and cranes. These machines caused the driver to endure vibrations and bouncing when they were operated.

On December 21, 2016, claimant required surgery to treat a non-work related medical condition. Claimant had previously informed the employer about his surgery and he did not return to physically working on the job after December 20, 2016.

Following his surgery, claimant was in the hospital for approximately five days. After his release from the hospital, he was given several restrictions due to the serious nature of the surgery. His restrictions immediately following his discharge from the hospital included no lifting, bending or

twisting. His restrictions also included refraining from riding in vehicles or machines that produced vibrations or caused any bouncing.

Claimant had several follow up appointments with his doctors and his restrictions were changed to a permanent lifting restriction of no more than twenty pounds and a permanent restriction from riding in vehicles or machines that produced vibrations or caused any bouncing. During claimant's June 19, 2017 meeting with his physician, his physician told him that he would not be able to return to work with this employer.

Claimant immediately contacted his employer the same day, June 19, 2017, and informed the employer of the prognosis and restrictions that his doctor had given him, including the fact that he was never going to be able to return to work or complete his job duties as a machine operator. Following the June 19, 2017 meeting, the employer sent claimant a letter dated June 19, 2017, which stated that claimant's short-term disability leave had expired and as of June 20, 2017, and his employment was terminated. See Exhibit A.

Claimant is currently unable to work due to his medical condition. Claimant has qualified for Social Security Disability Insurance effective December 19, 2016 due to his permanent disability. See Exhibit B.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit his employment without good cause attributable to the employer. Further, claimant is not able to work effective June 18, 2017, which is the date of his original claim for benefits.

The separation occurred when claimant met with the employer on June 19, 2017 and advised that he was unable to ever return to work because of his medical condition. Claimant's physician had advised that he could not return to work based on the seriousness of his condition.

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.

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 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. Emp'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; however, 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 (Iowa 1992); *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa 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, claimant 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.

In this case, claimant's medical condition was not attributed to the employer. Further, claimant never fully recovered from the medical condition. Because the claimant's medical condition is not work-related and he is unable to perform full work duties because of his medical condition, the employer is not obligated to accommodate a non-work related medical condition. Accordingly, although the separation was for good personal reasons, it was without good cause **attributable to the employer** and benefits must be denied.

Iowa Code § 96.4(3) provides:

> An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:
>
> 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)*a* provides:

> Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.
>
> (1) *Able to work.* An 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.
>
> *a. Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

To be 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*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. A prerequisite to receipt of unemployment insurance benefits is the claimant's ability to work. Claimant credibly testified that he is unable to work. As such, benefits must be denied.

DECISION:

The July 10, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit work without good cause attributable to the employer. Further, claimant is not able to work. Claimant is denied benefits until such time as he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Benefits are further denied until such time as claimant provides a medical release to return to some type of work of which he is capable of performing given his education, training and work experience, and any medical restrictions. At that point, there must be an evaluation of whether employment, with reasonable accommodation if appropriate, is available.

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Dawn Boucher
Administrative Law Judge

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Decision Dated and Mailed

db/rvs