

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN P OCONNELL
Claimant

APPEAL NO. 10A-UI-04043-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROLLING HILLS VETERINARY SRV PC
Employer

OC: 01/31/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 10, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 29, 2010. Claimant participated with witness Rita O'Connell and represented by Natalia Blaskovitch, Attorney at Law. Employer participated by Bob Kadlec, DVM, former President; Joe Jedlica, DVM, Vice President and Tom Lapke, DVM, Vice President. Exhibits A and B was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 17, 2009. Claimant went off work for surgery for a non-work-related health issue. Claimant was given a release to return to work with restrictions effective January 8, 2010. Claimant met with the employer in mid January and again February 1, 2010. The restriction said to avoid getting kicked by an animal. Claimant's job as veterinary assistant required significant work with large animals. Employer could not honor the restriction because claimant's job would always entail a risk of getting kicked. Claimant would always have risk of getting kicked when working with large animals and such risk was aggravated by claimant's use of a blood thinner drug. Claimant has been ordered to take blood thinners for life. Later a February 2, 2010 release was given with no further restrictions. The employer attempted to contact the surgeon to find out what the letter meant. The employer was blocked by claimant from talking to the treating surgeon. Then a March 29, 2010 letter was issued indicating that claimant was released without restriction. Claimant did not go to employer to offer himself for work after the full work release of March 29, 2010.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the

employment relationship because of a non-work-related work restriction. Claimant had a restriction issued in January 2010 to avoid getting kicked. Employer could not accommodate that work restriction because their practice was essentially for treatment of large animals. The restrictions changed over the next several months. Claimant did not return to employer to ask for his job back after the new doctors' releases came forth. Claimant has a duty to immediately return and ask for work. Claimant's failure to go back to employer after receiving the March 29, 2010 letter defeats the unemployment claim. As of March 29, 2010 it was clear that claimant had no restrictions. It is incumbent upon the employee to seek out employer and ask for work. Claimant failed his statutory obligation. Benefits withheld.

Iowa Code section 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 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.

DECISION:

The decision of the representative dated March 10, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs