

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES T SHERMAN
Claimant

APPEAL NO. 07A-UI-03885-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPRINGER SERVICES INC
Employer

**OC: 10/22/06 R: 02
Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

James Sherman (claimant) appealed a representative's April 12, 2007 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Springer Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 30, 2007. The claimant participated personally. The employer participated by Eddie Holman, Chief Financial Officer. The claimant offered one exhibit which was marked for identification as Exhibit A. Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant is denied unemployment insurance benefits because he voluntarily quit work without good cause attributable to the employer. In addition whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 15, 2007, as a full-time pest control technician. The claimant had a heart attack while working on or about February 26, 2007. He was hospitalized and later released on or about March 2, 2007. On March 4, 2007, he met with the employer and talked about his health and future. The claimant did not plan to have the bypass surgery that was recommended by his physician. The employer told the claimant he was uncomfortable with the claimant returning to work based on the facts presented to him.

On March 14, 2007, the claimant underwent heart bypass surgery. He continues to be under driving and weight restrictions from his physician. The job requires a large amount of driving and lifting. On March 30, 2007, the claimant left a note thanking the employer and resigning. The claimant did not think he could perform the functions of the position. Continued work was available had the claimant provided a work release from his physician and not resigned.

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 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.

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).

The claimant left work due to a heart attack under the advice of his physician. The employer consented to his leaving. The claimant has failed to provide the employer with certification that he has recovered. In addition the claimant has failed to offer his services to the employer. 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 not.

871 IAC 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 in the hospital twice and has not obtained a release to return to work. He is considered to be unavailable for work after February 26, 2007. The claimant is disqualified from receiving unemployment insurance benefits beginning February 26, 2007, due to his unavailability for work.

DECISION:

The representative's April 12, 2007 decision (reference 02) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs