

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE M GARCIA-RIOS

Claimant

APPEAL NO: 08A-UI-07236-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SUPREME STAFFING INC

Employer

**OC: 06/22/08 R: 03
Claimant: Appellant (5)**

Section 96.5-1 – Leave for Non-Work Related Reason

STATEMENT OF THE CASE:

Jose M. Garcia-Rios (claimant) appealed a representative's August 5, 2008 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Supreme Staffing, Inc. (employer) would not be charged because the claimant became voluntarily unemployed on December 17, 2007 when his physician restricted him from working for medical reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 25, 2008. The claimant participated in the hearing. The employer was not available for the hearing. No one appeared on the employer's behalf. Angela Irellano translated the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily leave his employment for reasons that qualify him to receive benefits?

FINDINGS OF FACT:

The claimant has worked about three years for the employer. When the claimant worked, he worked full time.

December 17, 2007, was the claimant's last day of work. After the claimant went to a doctor for health reasons, the doctor restricted the claimant from working. The claimant gave the employer a copy of this work restriction.

The claimant's doctor released him to return work without any restriction as of August 6, 2008. Since the claimant has been released to work, he has not contacted the employer about returning to his regular job.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily leaves employment without good cause attributable to the employer. Iowa Code section 96.5-1. When a claimant leaves employment upon the advice of a physician and immediately informs the employer he is unable to work, a claimant is not disqualified from receiving benefits if the employer does not have work available for him after the claimant has been released to work and offers to return to his regular job. Iowa Code section 96.5-1-d.

The claimant asserted during the hearing that his physician has not released him to return to work. However, Department records indicate the claimant's physician released him to return to work without any work restrictions as of August 6, 2008. Since a claimant must be able to and available for work any week he files a claim for benefits, the administrative law judge assumes the claimant did not fully understand a question as to whether his physician has released him to return to work.

Even though the claimant has been released to work without any work restrictions as of August 6, 2008, he is not currently eligible to receive benefits because he has not contacted the employer and offered to return to work. If the claimant contacts the employer by September 10, and offers to return to work to work at his former job but the employer does not have work for the claimant, the claimant can reopen his claim for benefits so the Department can determine at that time if the claimant is eligible to receive benefits as of the date he offered to return to regular job (sometime subsequent to August 25).

The claimant asserted he was frustrated because the employer does not offer insurance even though the claimant has worked for the employer for three years. While health insurance is often a benefit an employee desires, if the claimant decides he does not want to return to work because the employer does not offer health insurance benefits, this would establish that he quit his employment (sometime after August 6, 2008) for reasons that do not qualify him to receive benefits.

DECISION:

The representative's August 5, 2008 decision (reference 01) is modified, but the modification has no legal consequence. On December 17, 2007, the claimant had to leave his employment because his physician restricted him from working. The claimant's physician did not release the claimant to work without any work restrictions until August 6, 2008. If the claimant contacts the employer by September 10, 2008, and offers to return to work at his regular job, but the employer does not have any work for the claimant, the claimant is eligible to receive benefits as of the date he personally offers to return to work for the employer. If the claimant does not offer to return to work for the employer, he has voluntarily quit his employment for reasons that do not qualify him to receive benefits. He would then be disqualified from receiving unemployment insurance benefits as of June 22, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

(Since the claimant's physician did not release the claimant to return to work until August 6, 2008, and a decision has already been made on the issue of the claimant's ability and availability for work, the claimant is not eligible to receive benefits from June 22 to August 6, 2008.)

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs