

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**VINCENT H HUNDLEY**  
Claimant

**ADVANCE SERVICES INC**  
Employer

**APPEAL 17A-UI-11409-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/15/17**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury  
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 3, 2017, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 28, 2017. The claimant participated personally. The employer participated through Melissa Lewien, risk management. Employer Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, 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 quit the employment with good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed on assignment full-time at Ring-O-Matic in Pella, Iowa, from July 24, 2017 until September 15, 2017. The claimant then discontinued work when he notified the employer that he was having hernia surgery for a medical condition not related to this employment. The claimant had anticipated returning to the assignment upon release from his doctor, but it was filled in his absence. The claimant was not on a formal leave of absence or FMLA during this time. The evidence is disputed as to the reason for separation.

On September 26, 2017, Joy Hol, with the employer, called the claimant to notify him of the assignment ending and requested that he update the employer once he was released to return to work without restrictions (Employer Exhibit 1). The claimant had a doctor's appointment on October 3, 2017 (Employer Exhibit 1). As of November 21, 2017, the claimant had still not provided the employer a doctor's release so it was unable to place him on a new assignment (Employer Exhibit 1). The claimant asserted that he was released without restrictions effective

October 16, 2017 but that no work was available. The claimant did not provide a copy of the note he stated he gave the employer upon release from his physician or provide any doctor's note for the hearing showing that he was cleared to work without restriction.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant is separated from the employment without good cause attributable to employer.

Iowa Code § 96.5-1-d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 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; *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. 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 this case, the claimant left his employment effective September 15, 2017, to have hernia surgery, which was not related to this employment. This case rests on the credibility of the parties. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). Administrative agencies are not bound by the technical rules of evidence. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 630 (Iowa 2000). A decision may be based upon evidence that would ordinarily be deemed inadmissible under the rules of evidence, as long as the evidence is not immaterial or irrelevant. *Clark v. Iowa Dep't of Revenue*, 644 N.W.2d 310, 320 (Iowa 2002). Hearsay evidence is admissible at administrative hearings and may constitute substantial evidence. *Gaskey v. Iowa Dep't of Transp.*, 537 N.W.2d 695, 698 (Iowa 1995).

Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge found the employer's hearsay testimony to be more credible than the claimant, and the credible evidence presented does not support that the claimant provided the employer the certification of release from work, which would have allowed him to be placed on a new assignment.

Since the claimant left the employment for a personal medical condition, he must meet all of the requirements of the administrative rule cited above. The claimant failed to establish that he attempted to return to work with this employer by providing medical documentation of his release to work without restrictions. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

**DECISION:**

The November 3, 2017, (reference 02) decision is affirmed. The claimant separated from the employment without good cause attributable to employer. Benefits are withheld until such time as he works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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