

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY MCCANTS

Claimant

APPEAL NO. 08A-UI-01735-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

**OC: 01/06/08 R: 12
Claimant: Respondent (1)**

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.26-6-b – Work-related Illness or Injury

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed a representative's February 18, 2008 decision (reference 01) that concluded Randy McCants (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 5, 2008. The claimant participated in the hearing. Nancy Kroeze appeared on the employer's behalf and presented testimony from one witness, Suzanne Hilleman. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on February 24, 1992. He worked full time as a building custodian. His last day of work was July 5, 2007. He voluntarily quit as of that day.

The claimant had problems with frequent excessive vomiting, possibly coughing up blood, going back to at least February 2006. The claimant's doctor advised him in approximately September 2006 that the problem appeared to be caused or aggravated by chemicals, mold, or other substances in his work place, and recommended that the claimant leave his job and move into another environment. The claimant did not take action on that recommendation until about March 2007, when he spoke with his supervisor and explained the situation, indicating that he was going to quit as of July 5. The supervisor obtained a form for the claimant to complete, which he did, but the supervisor failed to turn the form into human resources. In May 2007, in discussion with a higher level supervisor, the claimant learned that his first-level supervisor had not turned in the resignation form. He then was given another form, which he signed on May 31 and gave to the higher supervisor. The higher supervisor inserted "unknown" on the form for the reason for leaving and turned the human resources department on June 4. The form still indicated that July 5 would be the claimant's last day of work. After the form was turned into

human resources, no one from that department spoke to the claimant to inquire as to his reason for leaving. No one from the custodial department was available at the hearing to testify as to his decisions with the supervisors in March or May 2007.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit, he would not be eligible for unemployment insurance benefits unless it was for 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.

871 IAC 24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

While normally the administrative law judge prefers to see written evidence of the medical advice to leave the employment provided either directly at the hearing or directly to the employer prior to completing a quit, in this case the claimant's uncontroverted testimony was that he had verbally informed at least one of the supervisors of his doctor's recommendation and that he was not advised to obtain that advice in writing or that he should discuss the situation with human resources before submitting his resignation. Further, over a month passed between the time human resources learned of the claimant's resignation intent and his actual last day, and no effort was made to inquire of him as to his reason so that the employer might be able to attempt to address the situation. Under the circumstances of this case, the administrative law judge concludes that the claimant has satisfied the requirements of the law.

The employer was unable or unwilling to provide reasonable accommodation in order to retain the claimant's employment. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's February 18, 2008 decision (reference 01) is affirmed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw