

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL JURGENS
Claimant

APPEAL NO: 13A-UI-12371-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA FIRE EQUIPMENT CO
Employer

OC: 10/13/13
Claimant: Appellant (2)

Iowa Code Section 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.26(6) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 1, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 26, 2013. The claimant participated in the hearing. The employer did not respond to the hearing notice by providing a phone number where it could be reached at the date and time of the hearing as evidenced by the absence of any contact names and phone numbers on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time warehouse manager for Iowa Fire Equipment from April 7, 2005 to October 14, 2013. The claimant suffered a non-work-related wound on his foot that became infected and he went to see his doctor July 19, 2013, expecting a routine visit. Instead, he was hospitalized for ten days and given intravenous antibiotics for ten weeks. The employer is not a large enough employer to offer Family and Medical Leave. The claimant did provide the employer with his doctor's excuse and maintained contact with the employer throughout his absence, calling in one to two times per week. The claimant received a full release to return to work October 14, 2013, and returned to the employer to offer his services but was told that due to his extensive time off the employer, not knowing when he would return, no longer had any work available for him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no work was available to the claimant upon his release to return to work from a non-work-related injury.

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.

871 IAC 24.26(6)b provides:

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

b. Non-employment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The claimant's return to the employer to offer services after the medical recovery evinces an intention to continue working. Therefore, the separation was attributable to a lack of work by the employer. Therefore, benefits are allowed.

DECISION:

The November 1, 2013, reference 01, decision is reversed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs