

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**TROY J RITTMER**  
Claimant

**CUSTOM-PAK INC – LP2**  
Employer

**APPEAL 15A-UI-10623-H2T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/23/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury  
871 IAC 24.25(35) – Separation Due to Illness or Injury

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 14, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 6, 2015. Claimant participated. Employer did not participate.

**ISSUE:**

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a group leader beginning on April 1, 1991 through August 26, 2015, when he voluntarily quit the job.

The claimant has a work-related injury to his shoulder. He filed a workers compensation claim and received medical treatment for that injury. His treating physician provided him with permanent work restrictions that will be with him for life. His employer was complying with all of the permanent work restrictions he had received. The employer was providing work for the claimant that complied with all of his work restrictions. The claimant began to have additional pain but did not seek additional medical treatment from any medical provider or ask to have his work restrictions modified. No doctor ever told or advised the claimant to quit his employment. The claimant chose to quit because he thought the work was hurting him.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

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 § 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 § 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 court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Employment Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

The statute provides an exception where:

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 Code § 96.5(1)(d).

The employer was offering work to the claimant that complied with all of his work restrictions. No physician advised him to quit the employment. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

**DECISION:**

The September 14, 2015 (reference 01) decision is affirmed. The claimant voluntarily quit his employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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