

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

WILLIE L HALL

Claimant,

and

CHARLES DRAKE & ASSOCIATES

Employer.

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HEARING NUMBER: 10B-UI-19216

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1-d

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED, in part, and REMANDED, in part.**

SECTION: 10A.601 Employment Appeal Board Review

FINDINGS OF FACT:

A hearing in the above matter was held January 29, 2010. The administrative law judge's decision was issued February 2, 2010, which determined that the claimant voluntarily quit without good cause attributable to the employer. That decision also determined that the "...claimant was not able and available to work due to illness from October 16 through November 23, 2009..." See, 09A-UI-19216. The administrative law judge's decision has been appealed to the Employment Appeal Board. The record of the hearing before the administrative law judge contains no evidence as to whether the claimant's injury was work-related or aggravated by the claimant's working conditions.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2009) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, *or direct the taking of additional evidence*, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision. (*Emphasis added.*)

If the claimant's injury was work-related, then the claimant's separation because of that injury may be attributable to the employer and the claimant would not be disqualified.

871 IAC 24.26(6) "b" which provides:

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 the 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.

White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992). In White, the court held that "when the illness is either caused or aggravated by circumstances associated with the employment, regardless of the employee's predisposition to succumb to the illness, the separation will be deemed to be with good cause attributable to the individual's employer...An illness or disability may correctly be said to be attributable to the employer even though the employer is free from all negligence or wrongdoing in connection therewith."

Here, the administrative law judge did not elicit any testimony about whether the claimant's medical condition was actually caused by the employment or aggravated by the employment. As the Iowa Court of Appeals noted in Baker v. Employment Appeal Board, 551 N.W. 2d 646 (Iowa App. 1996), the administrative law judge has a heightened duty to develop the record from available evidence and testimony given the administrative law judge's presumed expertise. His separation from work may be considered involuntary depending on the nature of his injury. By this record, the claimant appears to have returned to offer his services, but the employer did not allow him based on the restrictions.

Although the administrative law judge found the claimant to be able and available after November 23rd for which we too affirm, we are remanding this matter for additional evidence on the nature of the claimant's injury and whether the claimant was, in fact, able and available for some kind of work between October 16th and November 23rd.

DECISION:

The decision of the administrative law judge dated February 2, 2010 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, for further development of the record consistent with this decision, unless otherwise already addressed. The administrative law judge shall conduct a hearing following due notice, if necessary. If a hearing is held, then the administrative law judge shall issue a decision which provides the parties appeal rights.

John A. Peno

Elizabeth L. Seiser

AMG/ss

CONCURRING OPINION OF MONIQUE F. KUESTER:

I agree with my fellow board members in so far as they would affirm a particular portion of the administrative law judge's decision; however, I would go further and affirm the decision in its entirety. I do not find it necessary to remand this matter.

Monique F. Kuester

AMG/ss