

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN S LEEKLEY
Claimant

APPEAL NO. 08A-UI-08114-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COOKIES OF STORM LAKE INC
Employer

OC: 07/13/08 R: 01
Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

Cookies of Storm Lake, Inc. (employer) appealed a representative's September 2, 2008 decision (reference 01) that concluded Nathan S. Leekley (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 24, 2008. The claimant participated in the hearing. Jeff Herrig, the plant manager, appeared on the employer's behalf. 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.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits?

Is the claimant able to and available for work as of July 13, 2008?

FINDINGS OF FACT:

The claimant started working for the employer in January 2008. The claimant worked full-time cooking barbeque sauce and salsa, and stacking pallets. The claimant injured himself at work and was restricted from working April 17 through June 3, 2008. The claimant's physician, a worker's compensation doctor, released the claimant to do light-duty work on June 4. The employer accommodated this restriction and the claimant worked until July 2 performing light-duty work.

On July 3, the claimant informed the employer he had been released by his treating physician to work without any restrictions as of July 7. When the physician released the claimant to return to work, he indicated there was nothing more that could be done for the claimant's back because the claimant was a high surgical risk. The physician told the claimant his back would feel better after he lost significant weight.

As the claimant got ready for work on July 7 his back still bothered him. He contacted the employer and told the employer he was not coming back to work because he had decided he was going to back to school so he could use his brain instead of his brawn. The employer did not understand the claimant would have returned to work if the employer had offered him continued light-duty work. The claimant did not ask to see another physician on July 7. As of the date of the hearing, the claimant has not been seen by another physician.

Since the claimant established his claim for benefits during the week of July 13, he has looked for work he is not capable of performing. As of July 13, the claimant believes he was only capable of doing office work but has no experience in this type of work. As of the date of the hearing, the claimant has enrolled in college and received Department Approved Training.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. The claimant quit his employment on July 7, 2008. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6-2.

The law presumes a claimant quits with good cause when he is compelled to leave as a result of an injury suffered on the job. However, to be eligible under this provision, the claimant must present competent evidence that shows adequate health reasons to justify quitting and informs the employer that unless accommodations are made, he intends to quit. 871 IAC 24.26(6)(b).

The claimant has not met the requirements of 871 IAC 24.26(6)(b). The claimant quit on the day he had been released to return to work without any work restrictions. It is understandable that the claimant may have been frustrated when a doctor released him to return to work when his back still bothered him. The claimant, however, failed to ask the employer to send him to another physician and as of September 24, the claimant has not been seen by another physician.

After his physician told the claimant his back would not get any better until he lost a significant amount of weight, the claimant ultimately quit so he could return to school. The claimant decided he could no longer perform physical labor for a living. The claimant is commended for returning to school, but quitting so he can return to school does not qualify him to receive benefits. The law presumes a claimant quits without good cause when he leaves to attend school. 871 IAC 24.25(26).

The evidence establishes the claimant quit for personal reasons that do not qualify him to receive benefits. As of July 13, 2008, the claimant is not qualified to receive benefits.

Each week a claimant files a claim for benefits, he must be able to and available for work. The facts establish the claimant is not able to and available for work that he has work experience performing. Therefore, the claimant is not eligible to receive benefits as of July 13 because of issues with his back.

Since July 13, the claimant has filed for and received benefits. The issues of overpayment and/or waiver of overpayment are remanded to the Claims Section to address these issues.

DECISION:

The representative's September 2, 2008 decision (reference 01) is reversed. The claimant voluntarily quit his employment for personal reasons that do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of July 13, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. As of July 13, 2008, the claimant is not able to or available to work. The issues of overpayment and/or waiver of overpayment are remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css