

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES A DREES**  
Claimant

**AKSHA UPADHYAY INC  
SUPER 8 MOTEL**  
Employer

**APPEAL NO. 12A-UI-13755-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/14/12  
Claimant: Appellant (5-R)**

Section 96.5(1) – Quit  
Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Charles Drees, filed an appeal from a decision dated November 14, 2012, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on December 21, 2012. The claimant participated on his own behalf and was represented by Dave Katsumes. The employer, Super 8 Motel, participated by General Manager Donna Blue.

**ISSUES:**

The issues are whether the claimant quit work with good cause attributable to the employer and whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Charles Drees was employed by Super 8 from August 20, 2012 until October 20, 2012 as a part-time night desk clerk working 11:00 p.m. until 7:00 a.m. He is restricting the number of hours he can work to avoid impacting his social security disability benefits and was scheduled only three shifts per week.

His last day of work was the shift which ended at 7:00 a.m. on October 4, 2012. He notified General Manager Donna Blue by phone he was leaving town to go to the funeral of an aunt. She had asked him to come in to discuss it so she could make arrangements for someone to substitute for him. He did not come in as agreed but called her again as he was on the road to Illinois.

Mr. Drees did not contact the employer again until October 20, 2012, when he came with a doctor's note after minor knee surgery on October 17, 2012. The note stated he would be able to return to work at a desk job and with limited walking and standing. His job as the night desk clerk included folding sheets and other laundry, as well as preparing and serving breakfast. Ms. Blue told him there was no work he could do with those limitations.

Mr. Drees has not yet been fully released to return to work as of the date of the hearing. The issue of whether he is unduly limiting his available for work hours to avoid earning too much money has not been adjudicated.

**REASONING AND CONCLUSIONS OF LAW:**

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.

There is no indication the claimant quit or was fired. He did not fully cooperate with the employer in making arrangements for an extended absence for a family funeral or his surgery, but it appears work would have been available to him had he been able to do it.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant has not produced evidence he has been fully released to return to work for his non-work-related surgery. A "recovery" under... means a complete recovery without restriction. *Hedges v. IDJS*, 368 N.W.2d (Iowa App. 1985). His is currently not able and available to return to work for his regular job duties.

The issue of whether he is restricting the hours he will work because of social security should be remanded.

**DECISION:**

The representative's decision of November 14, 2012, reference 02, is modified without effect. The claimant is not able and available for work as he has not been fully released by his doctor. The issue of whether the claimant is restricting the number of hours he will work to avoid reducing his social security benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs