

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES A DUCHARME**  
Claimant

**APPEAL NO. 11A-UI-09628-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PANAMA TRANSFER INC**  
Employer

**OC: 06/05/11  
Claimant: Appellant (2)**

Iowa Code § 96.5(1)d – Voluntary Leaving (Illness/Injury)

**STATEMENT OF THE CASE:**

James Ducharme (claimant) appealed a representative's July 15, 2011 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Panama Transfer (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 18, 2011. The claimant was represented by Michael Tulis, attorney at law, and participated personally and through Mercy Ducharme, the claimant's wife. The employer participated by Dean Kloewer, president. The claimant offered and Exhibit A was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on March 31, 2010, as a full-time line haul driver. The claimant experienced pain in October 2010, due to repetitious activity at work. The claimant worked through March 25, 2011. On March 28, 2011, the claimant woke with extreme pain and went to a chiropractor. The chiropractor sent the claimant to the emergency room. The claimant was diagnosed with having three torn tendons and two torn muscles. The claimant understood he had a rotator cuff injury

On April 1, 2011, the claimant provided the employer with a work-related injury form. The employer did not have the claimant complete any form to report his injury. The claimant was restricted from working by his physician through April 20, 2011. No work was available for the claimant. The claimant had surgery on his shoulder on April 21, 2011. He was restricted from working by his physician through May 2, 2011. The physician returned the claimant to work with restrictions on May 3, 2011, and the claimant provided the note to the employer. The employer had no work available. The claimant filed for unemployment insurance benefits with an effective date of June 5, 2011.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

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.

871 IAC 24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

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

b. 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 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 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.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. *Suluki v. Employment Appeal Board*, 503 N.W.2d 402 (Iowa 1993). Inasmuch as the claimant did give the employer an opportunity to provide work with restrictions, the separation was with good cause attributable to the employer. Benefits are allowed.

**DECISION:**

The representative's July 15, 2011 decision (reference 02) is reversed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw