

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD W SCHMITT
Claimant

APPEAL NO: 10A-UI-17065-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLIED WASTE NORTH AMERICA INC
Employer

**OC: 10/31/10
Claimant: Appellant (1)**

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Richard W. Schmitt (claimant) appealed a representative's December 6, 2010 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Allied Waste North America, Inc. / now known as BFI Waste Services, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 27, 2011. This appeal was consolidated for hearing with one related appeal, 10A-UI-17066-DT. The claimant participated in the hearing. Frank Banigan appeared on the employer's behalf and presented testimony from one other witness, Ed Clancey. 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.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on or about August 26, 2004. He worked full time as a mechanic at the employer's Dubuque, Iowa location on a Monday through Friday, 10:00 a.m. to about 8:00 p.m. schedule. His last day of work was in approximately July 2010.

In approximately July 2010 the claimant broke his hand while off duty, preventing him from continuing to work at that time. He was placed on FMLA (Family Medical Leave) status. He had exhausted his FMLA entitlement by the end of August, and on September 1 was sent a letter informing him of such, indicating that the employer might proceed to fill his job, but that if he recovered and sought to return to work before the position was filled he would be returned to work status.

The employer had heard from the claimant's father that in about October the claimant had been released by his doctor. An appointment was scheduled with the employer's doctor to determine if the claimant was fit for work. However, on the day of the appointment the claimant cancelled

the appointment, indicating that while the hand had healed, he had other medical issues which caused him not to return to work. The claimant had not been specifically told by another doctor that he should not return to work due to the other medical issues. The claimant established an unemployment insurance benefit year effective October 31, 2010.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit, he would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Where the quit is for medical or health reasons, the quit is disqualifying at least until the claimant has recovered and seeks to return to work unless the medical or health issue is attributable to the employer. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b.

Where a claimant has been compelled to leave employment upon the advice of his physician due to a medical or health issue not caused or aggravated by the work environment, the claimant is not eligible to receive unemployment insurance benefits until or unless the claimant then recovers, is released to return to work by his physician, and in fact does attempt to return to work with the employer. 871 IAC 24.25(35). A “recovery” under Iowa Code § 96.5-1-d means a complete recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). The claimant was released to return to full work duties by the doctor who had been treating him for his hand injury; he has not provided sufficient evidence that there was some other medical issue for which a doctor was yet advising him not to return to work. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The representative’s December 6, 2010 decision (reference 02) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of October 31, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs