

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM L PETTY
Claimant

APPEAL NO. 07A-UI-06747-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEWIS INDUSTRIAL SERVICES INC
Employer

OC: 11/19/06 R: 04
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

William Petty filed an appeal from a representative's decision dated July 3, 2007, reference 02, which denied benefits based on his separation from Lewis Industrial Services, Inc. (Lewis). After due notice was issued, a hearing was held by telephone on July 26, 2007. Mr. Petty participated personally. The employer participated by Mark Leinbach, Field Superintendent.

ISSUE:

At issue in this matter is whether Mr. Petty was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Petty began working for Lewis on December 15, 2006 as a full-time construction laborer. He sustained an injury to his back on April 9, 2007, when he slipped on a ladder and fell at work. He was initially released to light duty, and the employer made such work available to him.

Approximately two weeks before his separation, Mr. Petty was released to full duty. He attempted to perform his usual job, but the employer noted that he was not able to carry his weight to the extent he had before the injury. He had difficulty lifting, climbing, and walking for prolonged periods. He notified the employer he was still having problems with his back and wanted to return to the doctor for an additional cortisone shot. Because he had been released to full duty, the employer declined to provide Mr. Petty with additional medical care. He was told to stay home and rest until his back felt better. On or about June 13, the employer suggested he consider retiring since he could not perform the job. Mr. Petty quit on June 14, 2007.

REASONING AND CONCLUSIONS OF LAW:

Mr. Petty initiated his separation when he quit on June 14, 2007. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Petty quit because he

could no longer perform the essential functions of his job due to a back injury. The fall he sustained while working for Lewis on April 9, 2007 apparently aggravated a pre-existing back condition. He attempted to resume full work activity but found he continued to have problems with his back. The employer's own observations established that Mr. Petty was not fully capable of performing his normal job after the injury of April 9.

Lewis did not offer Mr. Petty lighter work after he complained of continuing back problems. He was refused further medical care in spite of his continuing complaints. The administrative law judge concludes that remaining in the employment posed a serious risk to Mr. Petty's health. In fact, it was his employer that suggested he retire because of his inability to perform the job. He could have re-injured his back or further aggravated his condition if he had continued performing the heavy labor his job required.

A quit because of a medical condition attributable to the employer need not be on the advice of a doctor. See Rooney v. Employment Appeal Board, 448 N.W.2d 313 (Iowa 1989). For the reasons stated herein, the administrative law judge concludes that Mr. Petty's separation was for good cause attributable to the employer. The "good cause attributable to the employer" need not be based on some fault or wrongdoing on the part of the employer and may be attributable to the employment itself. Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956).

DECISION:

The representative's decision dated July 3, 2007, reference 02, is hereby reversed. Mr. Petty left his employment with Lewis for good cause attributable to the employer. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw