

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**NATHAN WATSON JR  
1501 S 10<sup>TH</sup>  
BURLINGTON IA 50601**

**REDYNS MASONRY LLC  
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MEMPHIS MO 63555**

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**Appeal Number: 04A-UI-11774-DT  
OC: 10/03/04 R: 04  
Claimant: Appellant (4)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**STATE CLEARLY**

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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:**

Nathan Watson, Jr. (claimant) appealed a representative's October 27, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Redyns Masonry, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 22, 2004. The claimant participated in the hearing and was represented by Toby Gordon, attorney at law. Diane Snyder 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.

#### FINDINGS OF FACT:

The claimant started working for the employer on October 20, 2003. He worked full time as a laborer in the employer's masonry subcontracting business. His last day of work was September 17, 2004.

The claimant had been having some personal health issues, and had been off work for medical tests from August 18 through September 12, 2004. The claimant did do some work the week of September 13 even though he had not been released; however, he was to return to his doctor on or about September 24, and he complied with the doctor's instruction not to work the week of September 20. On or about September 24 the claimant also had discussions with the employer's manager about future work. The most recent contact the claimant had with the employer was about October 4, 2004. However, the claimant never provided the employer with a doctor's release and when the claimant stopped reporting for work, the employer considered the claimant to have voluntarily quit.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

A "recovery" under Iowa Code section 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 has not demonstrated that he had been released to return to full work duties or that upon release he sought to report for work but no work was available. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied unless or until the claimant has demonstrated that he has now been released and that he has offered to return to work for the employer.

DECISION:

The representative's October 27, 2004 decision (reference 01) is modified in favor of the claimant. The claimant voluntarily left his employment without good cause attributable to the employer. As of October 3, 2004, benefits are withheld until such time as the claimant has provided the employer with a doctor's release and offered to return to work or until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

ld/tjc