

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN R HEIDBREDER
Claimant

APPEAL NO. 09A-UI-06765-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP
Employer

**Original Claim: 04/05/09
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated April 27, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 28, 2009. The employer participated by Sue Hultz, operations manager, and Nancy Hall, general manager. Although the claimant provided a telephone number at which he could be reached, he did not answer the telephone and there was no answering machine that picked up the call. Three separate phone calls were made to the claimant. The record consists of the testimony of Sue Hultz, the testimony of Nancy Hall, and Employer's Exhibits 1 through 8.

ISSUE:

Whether the claimant voluntarily quit his employment for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was initially hired by the employer on February 12, 2004 to serve as a security officer. He was promoted to a site supervisor on August 13, 2008. On September 16, 2008, the claimant was involved in a non-work-related automobile accident. A letter was sent to the claimant on October 7, 2008 setting forth the terms of his leave under the Family Medical Leave Act (FMLA). The claimant's FMLA leave began on September 16, 2008, and expired on December 18, 2008. The claimant was not physically able to return to work on December 18, 2008.

REASONING AND CONCLUSIONS OF LAW:

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.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The weight of the evidence indicates that the claimant voluntarily quit his employment due to a non-work-related health condition. The claimant had been involved in a non-work-related automobile accident on September 16, 2008, and was granted 12 weeks of FMLA leave. After the 12 weeks of leave, he was still unable to physically return to work. Accordingly, the claimant is deemed to have voluntarily quit his job without good cause attributable to the employer. Benefits are denied.

DECISION:

The decision of the representative dated April 27, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until 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.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw