

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ABDULLAHI A NOOR**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 20A-UI-12900-ED-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/05/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the October 1, 2020, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on December 10, 2020. The claimant, Abdullahi A Noor, participated personally and was represented by attorney, Chinedo I. Igbokwe. The employer, Tyson Fresh Meats Inc, participated through Daniel Horton. No exhibits were admitted.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was unable to work pursuant to medical advice from a treating physician. He has not yet received a full medical release from the treating physician.

The claimant was employed as a full-time styler. November 28, 2016 was claimant's hire date. Claimant's immediate supervisor was Jorge Roher. Claimant experienced a medical condition and was not able to work according to his doctor's note. Claimant was sent a letter by Unum, the company that administers the Employer's FMLA claims on April 16, 2020 notifying claimant he needed to fill out further paperwork to qualify for FMLA. Claimant did not submit the required papers to Unum to be considered for FMLA. Claimant's last day physically working on the job was April 22, 2020. Claimant voluntarily quit on April 22, 2020 because he was unable to work with his medical condition. Claimant quit by turning in his badge and notifying the employer verbally that was quitting due to his medical condition.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows: As a preliminary matter I find that the claimant voluntarily quit and was not discharged from employment.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(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.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

An employee's failure to return to the employer and offer services upon recovery from an injury "statutorily constitutes a voluntary quit and disqualifies an individual from unemployment insurance benefits." *Brockway v. Emp't Appeal Bd.*, 469 N.W.2d 256 (Iowa Ct. App. 1991).

Subsection d of Iowa Code § 96.5(1) provides an exception; however, the statute specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is

fully recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346 (Iowa 1992); *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n.*, 468 N.W.2d 223, 226 (Iowa 1991)(noting the full recovery standard of section 96.5(1)(d)). In the *Gilmore* case he was not fully recovered from his injury and was unable to show that he fell within the exception of section 96.5(1)(d). Therefore, because his injury was not connected to his employment and he had not fully recovered, he was considered to have voluntarily quit without good cause attributable to the employer and was not entitled to unemployment benefits. See *White*, 487 N.W.2d at 345.

Given the sole medical determination of the examining physician that the injury is not work-connected, claimant has not presented medical evidence to contradict that. Claimant has not established that the medical condition was work related, as is his burden.

Claimant has not established that the medical condition was work related, as is his burden; thus, he must meet the requirements of the administrative rule cited above. He has not been released to return to full work duties and, for unemployment insurance benefits purposes, the employer is not obligated to accommodate a non-work related medical condition. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be withheld.

**Note to Claimant:** If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). You will need to apply for PUA to determine your eligibility under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final, or if you are not eligible for PUA, you may have an overpayment of benefits.

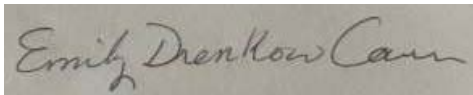
## **DECISION:**

### *Regular Unemployment Insurance Benefits Under State Law*

The October 1, 2020 (reference 01) unemployment decision is affirmed. Claimant is separated from the employment without good cause attributable to the employer. Unemployment benefits are withheld until such time as claimant is deemed eligible.

*Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act*

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that, in general, provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount in FPUC. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant".



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Emily Drenkow Carr  
Administrative Law Judge

December 22, 2020  
Decision Dated and Mailed

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