

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

GERRY J SHAVER  
1815 BLUFF ST  
WATERLOO IA 50702

THE WACKENHUT CORPORATION  
c/o JON-JAY ASSOCIATES INC  
PO BOX 6170  
PEABODY MA 01960-6170

Appeal Number: 06O-UI-00098-DT  
OC: 06/05/05 R: 03  
Claimant: Appellant (1)

**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

STATEMENT OF THE CASE:

Gerry J. Shaver (claimant) appealed a representative's July 8, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits. There had been a prior hearing and decision in this matter, but after appeal to the Employment Appeal Board, this matter was remanded to the Appeals Section for a new hearing. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 23, 2006. The claimant participated in the hearing. Matt Williams 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 December 1, 2003. He worked full time as a security officer at the employer's Waterloo, Iowa, business client. His last day of work was September 19, 2004.

The claimant had suffered prior injury to his eye due to laser exposure, and had gone through vocational rehabilitation. An incident occurred on September 19, 2004 in which the claimant was exposed to laser at work. He went for emergency care and other doctor's care thereafter, and was advised by his doctors that he could not return to work, that he was legally blind. However, the doctors could not tell the claimant whether the September 19, 2004 in fact caused or aggravated his condition to deteriorate to the point he could no longer continue his work.

The claimant did inform the employer that his doctors had indicated that he could not return to his work. The employer's workers' compensation carrier denied coverage on the claim, and it does not appear that the claimant pursued an appeal of that denial. He began receiving social security disability benefits in approximately December 2004. There were several months of intermittent communications between the claimant and the employer, but when the claimant did not advise the employer of any change in his condition or his doctors' indications that he could not return to work, the employer took the claimant out of the payroll system as of March 10, 2005.

#### 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(36) 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:

(36) The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

871 IAC 24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The claimant has not presented competent evidence establishing that his medical condition was caused or aggravated by the incident on September 19, 2004. While the claimant's situation is unfortunate, unemployment insurance benefits are also not intended to substitute for health or disability benefits. White v. Employment Appeal Board, 487 N.W.2d 342 (Iowa 1992). Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The representative's July 8, 2005 decision (reference 01) is affirmed. The claimant left his employment without good cause attributable to the employer. As of March 10, 2005, 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.

ld/tjc