

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY JENKINS
Claimant

APPEAL NO. 090-UI-07044-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DELANEY CONCRETE
CONSTRUCTION COMPANY INC**
Employer

**Original Claim: 01/11/09
Claimant: Respondent (2)**

Section 96.5-1-d - Voluntary Quit for Medical Reasons

STATEMENT OF THE CASE:

Delaney Concrete Construction Company (employer) appealed a representative's February 25, 2009 decision (reference 01) that concluded Terry Jenkins (claimant) was discharged and there was no evidence of willful or deliberate misconduct. A hearing was held on June 2, 2009, following due notice pursuant to Remand Order of the Employment Appeal Board dated May 7, 2009. The claimant participated personally. The employer participated by Brad Sevcik, Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on June 6, 2006, as a full-time laborer. The claimant suffered a work-related injury on May 8, 2008. He was released to perform light-duty work on October 22, 2008, and the employer had work available starting October 27, 2008. On October 29, 2008, the claimant notified the employer that he could not work due to a non-work-related condition. The claimant did not request a leave of absence.

The claimant had surgery and was released to return to work without restrictions on December 15, 2008. The claimant called the employer to ask for the fax number, but the employer never received a fax from the claimant. The claimant thought he faxed the employer his release to return to work. The employer never heard from the claimant again. The claimant asked a former co-worker if there was work available and the former co-worker said there was none. This was not the case. Continued work was available had the claimant supplied a release and presented himself for work.

The claimant filed for unemployment insurance benefits with an effective date of January 11, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work without 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982).

The claimant left work due to an injury under the advice of his physician. The employer consented to his leaving. The claimant has failed to provide the employer with certification that he has recovered. In addition, the claimant has failed to offer his services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits. The claimant may requalify by returning to the employer with an unconditional release. The claimant could then receive benefits if regular work or comparable suitable work was not available.

DECISION:

The representative's February 25, 2009 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw