

**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**

**JAMES B PECK
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DES MOINES IA 50315**

**FORREST & ASSOCIATES
817 SW 9TH ST
DES MOINES IA 50309-4579**

**Appeal Number: 04A-UI-03652-L
OC 02-29-04 R 02
Claimant: Appellant (2)**

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 26, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on April 27, 2004. The claimant did participate. The employer did participate through Ron Shannon. Claimant's Exhibits A - E were received. Employer's Exhibits One through Three were received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time bricklayer through July 23, 2003 when he quit. Claimant told employer he was injured at work when a stone hit him on the head on or before April 29,

2003. Mary Halabin, M.D. put claimant on restrictions of “no jarring, jolts” on July 9, 2003. (Claimant’s Exhibit B) She took him off work pending surgery effective July 24, 2003. (Claimant’s Exhibit D) Surgery has not been scheduled because of a lack of insurance coverage and the workers’ compensation insurance carrier’s denial of liability after initial payments. A workers’ compensation claim is pending. Claimant had a preexisting neck injury 30 years ago. (Claimant’s Exhibit A) His treating physician, Dr. Halabin, opined on July 24, 2003 that the accident at work resulted in “axial loading to the spine, [and] clearly exacerbated” the preexisting neck injury and condition. She also restricted him from working on scaffolding because of potential injury related to limited use of his left hand (tests revealed a pinched nerve in the neck affecting the hand) related to the injury. (Claimant’s Exhibit E)

No light-duty work was available beyond scaffolding work removing granite panels from the Federal Building.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with 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.

Iowa Code Section 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.

Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. Shontz v. IESC, 248 N.W.2d 88 (Iowa 1976). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. Raffety v. IESC, 76 N.W.2d 787 (Iowa 1956).

The treating physician has clearly stated that claimant could not continue to work while exposed to risk of further injury and the work injury aggravated the preexisting medical condition. The claimant met the requirements of Suluki v. EAB, 503 N.W.2d 401 (Iowa 1993) by notifying management of the employer of the physician's advice to quit due to the medical condition aggravated by the work. He also sought, in vain, another job with employer that would accommodate the condition but none was available. Benefits are allowed.

DECISION:

The March 26, 2004, reference 01, decision is reversed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

dml/kjf