

**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**

**JERRY L HARRELSON
900 – 8TH AVE
SHENANDOAH IA 50601**

**GARDEN VIEW CARE CENTER INC
1200 NISHNA RD
SHENANDOAH IA 50601**

**Appeal Number: 04A-UI-04332-DT
OC: 03/14/04 R: 01
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, 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-d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

Jerry L. Harrelson (claimant) appealed a representative's April 8, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Garden View Care Center, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 10, 2004. The claimant participated in the hearing and presented testimony from one other witness, Jim Nye. Dennis DeWild appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were entered into evidence. 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.

ISSUE: Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on March 31, 2003. He worked full time as a floor maintenance worker in the employer's long-term care nursing facility. His last day of work was March 15, 2004. He offered his notice of resignation on or about March 1, indicating that he did not believe he could physically continue to do the job.

On or about July 6, 2003, the claimant injured himself at work, resulting in a slipped disk. He had surgery for the condition in August 2003. He was off work and receiving workers' compensation for several months. In January 2004 he was anxious to return to work. On January 27 he submitted to a functional capacity evaluation by an occupational therapist. That evaluation concluded that the claimant "demonstrated . . . he can complete the essential functions of his job as a floor maintainer at the care center." While the therapist took note of the claimant's complaint of becoming stiff and sore after working, the therapist indicated that this could be due to inactivity on the part of the claimant, and advised daily stretching exercises.

The claimant did resume his duties at the facility, but did experience continued stiffness and soreness. However, he did not routinely do the exercises as instructed. He concluded that he could not continue to do the type of work required for his position. While at the time of the surgery the claimant's doctor had indicated it could be up to a year before the claimant could return to his regular duties, the claimant did not obtain and provide any medication documentation to the contrary of the occupational therapists conclusions that he was able to perform his regular duties in January, nor did he seek any further light duty restrictions from his doctor or light duty assignments from the employer to allow for a longer healing period.

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.

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.

The claimant has not presented competent medical evidence showing adequate health reasons to justify his quitting. Even accepting the claimant's verbal testimony as to the recommendations made by his doctor, before quitting he did not seek any accommodations to his work duties. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The representative's April 8, 2004 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of March 15, 2004, 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/kjf