

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARION R LESHER
Claimant

APPEAL NO. 09A-UI-09634-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOMGAARS SUPPLY INC
Employer

**Original Claim: 05/24/09
Claimant: Appellant (1)**

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated July 1, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 22, 2009. The claimant participated. The employer has failed to respond to the hearing notice and did not participate. Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether the claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and the considered all of the evidence in the record, finds: The claimant has a back problem. The back problem has caused the claimant to receive treatment. He also has had lifting restrictions imposed by his doctors. The claimant is not to perform any lifting at work. The claimant has worked on load-out and as a key carrier for the employer. Both positions require lifting. The claimant was injured in a non-work-related incident and was unable to work pursuant to medical advice from a treating physician. The claimant has not yet received a full medical release from the treating physician.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is separated from the employment without good cause attributable to the employer.

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.

871 IAC 24.26(6)a 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.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The claimant has not been released to return to full work duties and 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.

The record reflects that claimant's illness is not work-related and that he is unable to perform his full work duties because of his illness, and the employer is not obligated to accommodate a non-work-related medical condition. Accordingly, although the separation was for good personal reasons, it was without good cause attributable to the employer and benefits must be denied.

DECISION:

The July 1, 2009, reference 01, decision is affirmed. The claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/kjw