

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES S CHILDERS
Claimant

APPEAL NO. 08A-UI-07938-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEE ZEE INC
Employer

**OC: 07/27/08 R: 02
Claimant: Appellant (1)**

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 20, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on September 18, 2008. Claimant participated with Clarissa Saiz. Employer participated through Sarah Tew. Claimant's Exhibit A was received.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time assembler from July 8, 2007 until July 21, 2008 when he quit after taking sick leave and vacation since July 14. He had a history of back trouble, Chronic Obstructive Pulmonary Disease (COPD) and emphysema. He had a stroke in August 2007 that was not linked to the work and he had thought the job was too difficult for him since the date of hire. He did not provide medical information to employer about his concerns after August 2007 and did not seek assistance from the personnel department about filing a claim for disability.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left 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 24.25(35) 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 § 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 § 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant has not established that the injury was work-related or aggravated, as is his burden since he thought the job was too difficult given his medical history since the first day of employment. Thus, he must meet the requirements of the administrative regulation cited above. He did not present evidence in writing to the employer that a physician suggested leaving the employment and no work restrictions were in force as of the date of the separation. Nor did he request assistance from employer to explore a disability claim. It appears that even as of the date of hire, claimant was not suited for this type of work due to his medical history. Although claimant may have had good personal reasons for leaving the employment, they were not attributable to the employer. Benefits must be denied.

DECISION:

The August 20, 2008, reference 01, decision is affirmed. The claimant voluntarily left his employment 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css