

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSSELL L WOODS

Claimant

APPEAL NO: 07A-UI-02615-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIOUX CITY WILBERT VAULT CO

Employer

**OC: 02/04/07 R: 01
Claimant: Respondent (1)**

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.26-6-b – Work-related Illness or Injury
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Sioux City Wilbert Vault Company (employer) appealed a representative's March 5, 2007 decision (reference 01) that concluded Russell L. Woods (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 29, 2007. The claimant participated in the hearing and presented testimony from one other witness, Sheri Woods. Mike Byroad appeared on the employer's behalf. 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.

ISSUES:

Did the claimant voluntarily quit without good cause attributable to the employer? Is the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on September 22, 1999. He worked full time as a laborer in the employer's burial vault manufacturing and installation business. His last day of work was June 6, 2006.

On October 24, 2005, the claimant suffered a work-related shoulder injury for which he received treatment under the employer's workers' compensation insurance. Under the recommendations of first the employer's company physician and later specialists to whom the claimant was referred by the company's doctor, the claimant performed light duty work from October 25, 2005 through June 6, 2006. The specialists ultimately determined that the claimant had suffered a tear in his rotor cuff necessitating surgery, which was performed on June 7, 2006.

After the surgery, the treating specialist did not release the claimant to return to any work while he underwent physical therapy. In early December 2006 he underwent a functional capacity evaluation, and on December 14, 2006 the specialist released the claimant from further

treatment but gave him a permanent restriction of only light to medium work. The claimant's regular job could not be done within those restrictions. On December 15 the claimant met with Mr. Byroad, the employer's manager, and informed him of the permanent restrictions, indicating that he could not return to work at his prior regular position. Mr. Byroad indicated that there was not sufficient other work available for the claimant that would be within his restrictions to keep him employed full time; at best there would only be about 20 hours of work available per week that would be within the claimant's restrictions. As a result, it was concluded that the claimant would not be returning to the employer's employment.

Since establishing his claim for unemployment insurance benefits, the claimant has been conducting a work search, and has made application for various positions such as cook and cashier. These are positions which do not exceed the specifications of his permanent restrictions.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit, he would not be eligible for unemployment insurance benefits unless it was for 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)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 satisfied the requirements of the rule. The employer was unable to provide reasonable accommodations in order to retain the claimant's employment; half-time work would not be a "reasonable accommodation." "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Benefits are allowed, if the claimant is otherwise eligible.

The remaining issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

To be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." Sierra v. Employment Appeal Board, 508 N.W.2d 719, 721 (Iowa 1993); Geiken v. Lutheran Home for the Aged, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). The claimant has demonstrated that he is able to work in some gainful employment. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's March 5, 2007 decision (reference 01) is affirmed. The claimant voluntarily left his employment with good cause attributable to the employer. The claimant is able to work and available for work. Benefits are allowed, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs