

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEVIN KIMBELL**

Claimant

**APPEAL NO. 07A-UI-07383-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHWAN'S HOME SERVICE INC**

Employer

**OC: 06/24/07 R: 03  
Claimant: Respondent (2)**

Section 96.5-1-d – Voluntary Leaving/Illness or Injury  
871 IAC 24.25(35) – Separation Due to Illness or Injury  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Schwan's Home Service, Inc. (employer) appealed an unemployment insurance decision dated July 24, 2007, reference 01, which held that Kevin Kimbell (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 29, 2007. The claimant participated in the hearing with Attorney Dean Meine. The employer participated through Roger Evert, Human Resources Manager and Todd Johnson, Location General Manager. 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:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time customer service manager from June 22, 2006 through June 7, 2007. His job involves driving and he has to be certified under the Department of Transportation (DOT) guidelines. In order to be DOT qualified, the claimant must have a valid medical examiner's certificate which establishes he is physically fit to drive. On May 29, 2007 the claimant's physician put him on insulin injections for diabetes and under DOT regulations, a person is not medically fit to drive if taking insulin injections. The claimant advised his employer of his medical condition and could no longer drive beyond June 4, 2007. He called the employer on June 7, 2007 to indicate he would not be returning.

The claimant filed a claim for unemployment insurance benefits effective June 24, 2007 and has received benefits after the separation from employment.

## REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code section 96.5-1. The claimant left his employment on June 2, 2007 due to a non-work-related medical condition.

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.

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 section 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 section 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 is unable to carry on the essential functions of his position due to a non-work-related medical condition. He is currently required to take insulin injections and, therefore, not allowed to drive pursuant to DOT regulations. The claimant would only be eligible for benefits if his position were not available to him after his recovery. A "recovery" under Iowa

Code section 96.5-1-d means a complete recovery without restriction. White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992) (citing Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985)). The claimant has not been released to return to full work duties. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated July 24, 2007, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,870.00.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/css