

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH R SCHIPPER
Claimant

APPEAL NO. 11A-UI-12769-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AVENTURE STAFFING & PROFESSIONAL
Employer

OC: 08/28/11
Claimant: Appellant (1)

Iowa Code § 96.5(1)(d) – Voluntary Quit
Iowa Code § 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Kenneth Schipper filed a timely appeal from the September 20, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 19, 2011. Mr. Schipper participated. Kayla Neuhaufen, Human Resources Representative, represented the employer. Exhibits One, Two and Three were received into evidence.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant has been able and available for work since he established his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Kenneth Schipper began a full-time temporary work assignment at Exopack on July 5, 2011 and continued in the assignment until August 5, 2011, when he voluntarily quit. Mr. Schipper suffers from Crohn's disease and has taken the prescription steroid prednisone for six years. Mr. Schipper wore TED compression stockings while he performed the work. Mr. Schipper left the assignment because the TED hosiery made his legs too warm and because the work was making his hands sore. Mr. Schipper asked a supervisor whether there was any other way he could perform his duties and the supervisor indicated there was no other way. While Mr. Schipper asserts that a doctor wanted him to leave the employment, Mr. Schipper did not provide the employer with any medical documentation to support his need for accommodations or his need to leave the employment. Mr. Schipper also did not provide any medical documentation for the appeal hearing.

Mr. Schipper established a claim for unemployment insurance benefits that was effective August 28, 2011. Since Mr. Schipper established his claim for benefits, he has been engaged in an active search for new employment and has been able to perform work.

Mr. Schipper began new, part-time employment on October 4, 2011. Mr. Schipper has been guaranteed 25 hours per week, but hopes the employment will transition to full-time.

REASONING AND CONCLUSIONS OF LAW:

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.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

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.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Mr. Schipper has failed to present sufficient evidence to establish that it was medically necessary for him to leave the employment or that the decision to leave was based on advice received from a medical professional. The administrative law judge notes that Mr. Schipper failed to provide any medical documentation to support the assertion that he needed accommodations or needed to leave the employment. The weight of the evidence indicates that Mr. Schipper voluntarily quit the full-time employment without good cause attributable to the employer. Accordingly, Mr. Schipper is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Schipper.

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".

871 IAC 24.22(1)a, (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An 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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of

services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that Mr. Schipper has been able to work, available for work, and actively engaged in a search for new employment since he established his claim for benefits. But for the disqualifying separation from Aventure Staffing, Mr. Schipper would have been eligible for benefits effective August 28, 2011, provided he met all other eligibility requirements.

DECISION:

The Agency representatives September 20, 2011, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged. The claimant was able and available for work effective August 28, 2011.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs