

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUANE L ADAM
Claimant

APPEAL NO. 09A-UI-17609-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELITE TREE INC
Employer

Original Claim: 10/04/09

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Duane L. Adam (claimant) appealed a representative's November 12, 2009 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Elite Tree, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 4, 2010. This appeal was consolidated for hearing with one related appeal, 09A-UI-17610-DT. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer on or about January 5, 2009. He worked full-time as a journeyman trimmer and sometimes crew leader in the employer's utility line clearance business. His last day of work was on or about August 22, 2009.

For several months prior to August 22, the claimant had been having symptoms related to his balance and coordination. In about early August, he sought medical attention because of swelling in his neck and face and was told there was some complication resulting from some ear infections, and that he would need to have surgery. A date for surgery was set for October but then moved up to September due to the surgeon's schedule. On or about August 12, the claimant informed the employer that the definite date for the surgery would be September 2, and that the doctor did not want him working after August 22 to avoid any possible exposure to the chemicals sometimes used in the business to prevent any potential for complications resulting from the chemical exposure. The employer indicated that it would work with the claimant and that he should check back with them after he was released by his doctor.

On October 1 the claimant's doctor gave him a release effective October 4 that he could return to work without any restrictions. He began calling and leaving messages for the general foreman and the crew foreman, leaving over 20 messages in the period between October 1 and October 5. He indicated in the messages that he had been released by his doctor and was prepared to return to work. The general foreman returned one of the calls on or about October 5 and indicated to the claimant that there was potential work available in Minnesota. The claimant responded that he was

not sure of the reliability of his truck to drive that far and so he was interested in seeing if he could work out a carpool arrangement with someone else on the crew, a common situation. The general foreman responded that he thought something could be worked out. However, he did not get back with the claimant with any further information, and did not respond to the additional three to four more messages the claimant left for him inquiring about returning to work on the project in Minnesota. As a result, when the claimant heard nothing further by about October 9, he understood the employer was not going to return him to work.

The claimant established an unemployment insurance benefit year effective October 4, 2009.

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. Where the quit is for medical or health reasons, the quit is disqualifying at least until the claimant has recovered and seeks to return to work unless the medical or health issue is attributable to the employer. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b.

Where a claimant has been compelled to leave employment, even though it was intended to be temporary, due to a medical or health issue not shown to be caused or aggravated by the work environment, the claimant is not eligible to receive unemployment insurance benefits until or unless the claimant then recovers, is released to return to work by his physician, and in fact does attempt to return to work with the employer. 871 IAC 24.25(35).

Here, the claimant was released to return to work; he did seek to return to work with the employer, but his position was no longer available to him. "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). Even though the employer had a good business reason for proceeding to fill the claimant's position, the separation is with good cause attributable to the employer and benefits are allowed.

DECISION:

The representative's November 12, 2009 decision (reference 02) is reversed. The claimant voluntarily left his employment with the employer; as of October 4, 2009, it is deemed to be with good cause attributable to the employer. Benefits are allowed, if the claimant is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw