

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD M ELSEN
Claimant

APPEAL NO. 07A-UI-02021-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SALEM MANAGEMENT INC
RUDY SALEM EMPLOYMENT AGENCY
Employer

OC: 01/07/07 R: 01
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 15, 2007, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 14, 2007. Claimant participated with witness Don Fitzgerald, represented by Willis Hamilton, Attorney at Law. Employer participated by Cyd Hall, Office Manager. Exhibits A and One were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant last worked for employer on July 16, 2006. Claimant went off work for a work-related injury. Claimant was given a light duty restriction October 6, 2006. Claimant was offered light duty work by the employer that fit his work restriction. Claimant declined the light duty work because he wanted to help harvest on the family farm. Claimant did not intend to quit when refusing light duty work. Claimant was given a full duty work release on January 1, 2007. Claimant asked for further work after the full duty release. Employer had no further work available after January 1, 2007.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of a work related injury. Claimant was off work due to injury. Claimant was offered light duty work that was too far from his home. Claimant declined the job for multiple reasons. However, refusing work when on a light duty workers' compensation restriction is not a quit. Claimant was not yet released to full duty work. Declining light duty work cannot be held a quit in and of itself. Claimant upon receiving his full duty release returned

to the employer to ask for further assignment. Since no further work was available this is a separation attributable to employer. Benefits allowed

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 24.26(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.

DECISION:

The decision of the representative dated February 15, 2007, reference 02, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw