

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MARK A ADAMS  
1808 E 23<sup>RD</sup> ST  
DES MOINES IA 50317

G & K SERVICES COMPANY  
C/O TALX UC EXPRESS  
P O BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-10321-DT  
OC: 08/22/04 R: 02  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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:

G & K Services Company (employer) appealed a representative's September 13, 2004 decision (reference 01) that concluded Mark A. Adams (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 October 13, 2004. This appeal was consolidated for hearing with one related appeal, 04A-UI-10322-DT. The claimant participated in the hearing. Mike Goodwin appeared on the employer's behalf. During the hearing, Claimant's Exhibits A and B were entered into evidence. 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.

#### FINDINGS OF FACT:

The claimant started working for the employer on January 23, 2004. He worked full time as a route sales representative in the employer's Pleasant Hill, Iowa uniform and textile rental business. His last day of work was August 5, 2004.

The claimant had been allowed a vacation day on August 6, 2004. He was scheduled to return to work on August 9; however, on August 9 he contacted the employer and reported that while off work he had injured his back, that he was receiving medical attention, and that he would be off work for some time. The claimant's doctor released him for light duty effective August 16, but since the injury was not work-related, the employer declined to return the claimant to work with light duty.

On August 17, Mr. Goodwin, the employer's service manager, sent the claimant a letter advising him that if he were not able to return to work by August 25 without restriction, the employer would consider the claimant to have voluntarily resigned his position. On August 24, the claimant contacted Mr. Goodwin and told him that he was still doing physical therapy and was scheduled to return to his doctor on August 27, at which time the doctor would likely release the claimant for full duty. Mr. Goodwin responded that the employer's position still stood, and that if the claimant could not return to work without restriction on August 25, his job would be filled, and that a later release would not be accepted. The employer did fill the claimant's position on August 26, 2004. The claimant's doctor did release him without restrictions on August 27, effective August 30, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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.

A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). The claimant has been released to return to full work duties effective August 30, 2004; however, the employer would not accept the release and allow the claimant to return to work as the release did not occur until after the employer determined to fill the claimant's position. The administrative law judge understands that the employer had a good business reason for declining to allow the claimant to return to work after the August 25, 2004 deadline. However, "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.

DECISION:

The representative's September 13, 2004 decision (reference 01) is affirmed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

ld/s