

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS E DURDEN

Claimant

APPEAL NO: 09A-UI-15478-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RANDY D KRAMER CONSTRUCTION

Employer

OC: 01/04/09

Claimant: Appellant (1)

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:

Douglas E. Durden (claimant) appealed a representative's October 9, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Randy D. Kramer Construction (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 17, 2009. The claimant participated in the hearing. The employer received the hearing notice and responded by calling the Appeals Section on October 26, 2009. The employer indicated that Mr. Kramer would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, Mr. Kramer was not available; therefore, the employer did not participate in the hearing. During the hearing, Claimant's Exhibit A was 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.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on or about April 15, 2004. He worked full time as foundation worker/structural mover. His last day of work was on or about August 31, 2009. He voluntarily quit on September 18. His reason for quitting was a conclusion that the work was too stressful on his back.

The claimant had prior back issues triggered by incidents off work, at home. He had a history of herniated discs. A doctor had verbally advised him in January that he should consider finding another line of work. However, there was no medical documentation that the claimant's condition was caused or aggravated by the work, nor was there documentation of medical advice that the claimant needed to cease working in his position with the employer.

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 section 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b.

Where a claimant has been compelled to leave employment upon the advice of his physician due to a medical or health issue not shown by proper medical evidence 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). 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 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 until or unless he is fully released and does attempt to return to work with the employer.

DECISION:

The representative's October 9, 2009 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of September 18, 2009, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible, or until he has recovered and sought to return to work, but no work is made available to him.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css