

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DANIEL CHISHOLM**  
Claimant

**CITY OF MASON CITY**  
Employer

**APPEAL 21A-UI-09697-JD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/21/21  
Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

On March 31, 2021, the Claimant filed an appeal from the March 26, 2021, (reference 01) unemployment insurance decision that denied benefits based on a determination that the claimant voluntarily quit his employment without good cause that was attributable to his employer. The parties were properly notified about the hearing. A telephone hearing was held on June 16, 2021. Claimant Daniel Chisholm, participated personally. Employer participated through witness Tiffany Hammond.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on February 24, 2014. Claimant last worked as a part-time transit driver. Claimant's last day of work was December 18, 2020. Claimant was on a medical leave of absence from December 18, 2020, until February 23, 2021, due to a respiratory illness and heart issues. The claimant was separated from employment on February 23, 2021, after providing his employer with a note from his physician that indicated he was not medically able to work due to his deteriorating health and that the claimant required continuous oxygen therapy. The claimant's physician indicated that the claimant's work restriction was indefinite.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without 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.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6) (b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). The statute specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a

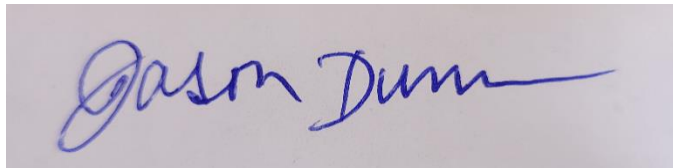
physician. The exception in section 96.5(1)(d) only applies when an employee is *fully* recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346; *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n.*, 468 N.W.2d 223, 226 (Iowa 1991) (noting the full recovery standard of section 96.5(1)(d)). In the *Gilmore* case, the claimant was not fully recovered from his injury and was unable to show that he fell within the exception of section 96.5(1)(d). Therefore, because his injury was not connected to his employment and he had not fully recovered, he was considered to have voluntarily quit without good cause attributable to the employer and was not entitled to unemployment benefits. See *White*, 487 N.W.2d at 345; *Shontz*, 248 N.W.2d at 91.n

The claimant provided a note from his physician to his employer stating that he was not cleared for work due to a medical condition. The claimant's illness was not attributable to the employer and the employer understandably interpreted this information as a resignation from the claimant.

Claimant was unable to perform his job duties due to personal illness and informed the employer of this. Claimant's voluntarily quitting was without good cause attributable to the employer and claimant has not yet fully recovered and returned to offer his services to the employer pursuant to Iowa Code § 96.5(1) d. As such, the separation from employment is disqualifying." Benefits are denied.

**DECISION:**

The March 26, 2021 (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily quit without good cause attributable to the employer. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount after his February 23, 2021 separation date, and provided he is otherwise eligible.



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Jason Dunn  
Administrative Law Judge  
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June 30, 2021  
Decision Dated and Mailed

jd/mh