

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STANLEY J BALLARD
Claimant

APPEAL NO. 11A-UI-11581-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

POWER WASH
Employer

OC: 07/24/11
Claimant: Appellant (1)

Section 96.5-1-d - Voluntary Quit for Medical Reasons

STATEMENT OF THE CASE:

Stanley Ballard (claimant) appealed a representative's August 24, 2011 decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Power Wash (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 26, 2011. The claimant participated personally. The employer participated by Daniel Gesy, Owner. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in January 2011, as a full-time manager. The claimant suffered from a non-work-related medical condition and was hospitalized on June 29, 2011. He was released from the hospital on July 4, 2011. The claimant kept in contact with the employer through July 12, 2011. The employer told the claimant to take the time he needed. The claimant's physician released him to return to work without restrictions on July 19, 2011. The claimant tried twice to call and twice to stop by the workplace. He could not reach the employer. The claimant did not mail the employer the release or a note indicating he was ready to return to work. He filed for unemployment insurance benefits with an effective date of July 24, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code § 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982).

The claimant left work due to a medical issue under the advice of his physician. The employer consented to his leaving. The claimant has failed to provide the employer with certification that he has recovered. In addition the claimant has failed to offer his services to the employer. While the claimant did try twice to provide the information to the employer, he could have provided the documents to the main office or mailed them to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits. The claimant may requalify by returning to the employer with an unconditional release. The claimant could then receive benefits if regular work or comparable suitable work was not available.

DECISION:

The representative's August 24, 2011 decision (reference 03) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until

the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs