

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD BANCROFT JR
Claimant

APPEAL NO. 08A-UI-04669-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOHR LUMBER LLC
Employer

OC: 04-06-08 R: 01
Claimant: Respondent (1)

Iowa Code 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:

The employer filed a timely appeal from the May 6, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 30, 2008. The claimant participated in the hearing. Jim Mohr, Owner, participated in the hearing on behalf of the employer.

ISSUE: The issue is whether the claimant voluntarily left his position due to a non-work-related injury or illness.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time yard man for Mohr Lumber from June 4, 2007 to November 8, 2007. He suffered from torn retinas and was unable to see and consequently was unable to work pursuant to medical advice from a treating physician. He was released to return to work April 8, 2008, and returned to the employer to offer his services but the employer did not have work available for him due to a downturn in business.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was temporarily separated from his employment with 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 employer is not obligated to accommodate a non-work-related medical condition while the claimant is off work due to medical restrictions. Once the claimant has received a release to return to work, however, and returns to the employer and offers his services, he is eligible for unemployment insurance benefits if the employer does not have comparable, suitable work available at that time. In this case the claimant did return to the employer and offer his services but the employer did not have work available due to a downturn in business. The claimant has been released to return to full work duties. Accordingly, the separation is with good cause attributable to the employer and benefits must be allowed.

DECISION:

The May 6, 2008, reference 01, decision is affirmed. The claimant's separation was with good cause attributable to the employer. Benefits are allowed provided the claimant is otherwise

eligible because he obtained a release without restriction to return to regular duties, offered services to the employer, and the employer did not have comparable, suitable work available.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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