

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACK F CARLSON

Claimant

APPEAL NO. 07A-UI-03453-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC

Employer

**OC: 02/25/07 R: 03
Claimant: Respondent (2)**

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

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Team Staffing (employer) appealed a representative's March 26, 2007 decision (reference 01) that concluded Jack Carlson (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 17, 2007. The claimant participated personally. The employer participated by Sarah Fiedler, Administrative Assistant.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on January 2, 2006, as a temporary worker. On January 18, 2007, the claimant slipped and fell over a pet's toy at his residence. He broke his scapula. A woman called at 2:30 a.m. on January 19, 2007, and said the claimant would not be at work. The claimant was released from the hospital later on January 19, 2007. On his way home from the hospital the claimant stopped at the employer's office and at his assigned work. He dropped off a physician's note indicating he could not return to work until his appointment with orthopedics. The employer did not fully read the note and did not know when the claimant could return to work. On March 2, 2007, after his appointment, the claimant returned to the employer with a release to return to work with lifting restrictions for six weeks. There was no work available for the claimant.

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 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.

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 an injury under the advice of his physician. The claimant has failed to provide the employer with certification that he has recovered without restrictions. In addition, the claimant has failed to offer his services to the employer after release without lifting restrictions. 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.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's March 26, 2007 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,044.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw