

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEITH J FUGATE

Claimant

APPEAL NO. 13A-UI-01035-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NESTLE PURINA PETCARE COMPANY

Employer

OC: 12/30/12

Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 22, 2013, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 27, 2013. Claimant participated. Employer failed to respond to the hearing notice and did not participate. Exhibit A was admitted into evidence.

ISSUES:

The issue in this matter is whether claimant quit for good cause attributable to employer. The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 12, 2012. Claimant went off work due to illness. Employer removed claimant as an employee due to overextending the leave of absence effective July 11, 2012. Claimant was not released by his doctor until December 2012. Claimant is able and available for full-time work effective December 30, 2012.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he was sick. This is a separation caused by employer because claimant was still under treatment when employer administratively terminated the employment relationship. Employer did not give claimant time to recover and return to ask for his job back. This is a separation for good cause attributable to employer. Benefits allowed.

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.

Claimant is able and available for full-time employment effective the week of December 30, 2012.

DECISION:

The decision of the representative dated January 22, 2013, reference 01, is reversed. Claimant is able and available for work effective December 30, 2012. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs