

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANCISCO S RAMOS
Claimant

APPEAL NO. 11A-UI-14465-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOLAR PLASTICS INC
Employer

**OC: 02/20/11
Claimant: Appellant (1)**

Iowa Code § 96.5(1)d – Voluntary Leaving (Illness/Injury)
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Francisco Ramos (claimant) appealed a representative's November 2, 2011 decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Solar Plastics (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 1, 2011. The claimant participated personally through interpreter, Steven Rhodes. The employer participated by Tom Barker, Production Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the 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 that: The claimant was hired on June 27, 2011, as a full-time trimmer. The claimant had chest pains and went to the hospital. He was diagnosed with high blood pressure. His physician thought it might be due to the claimant's job. The physician returned the claimant to work without restrictions

The claimant did not notify the employer of his concerns or of a request for accommodation prior to giving notice of leaving the employment. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 96.5-1 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.

871 IAC 24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. *Suluki v. Employment Appeal Board*, 503 N.W.2d 402 (Iowa 1993). Inasmuch as the claimant did not give the employer an opportunity to resolve his complaints prior to leaving employment, the separation was without good cause attributable to the employer. Benefits are denied.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes he is.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness he is considered to be unavailable for work. The claimant was released to return to work without restrictions by his physician. He is considered to be available for work because his physician stated he was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's November 2, 2011 decision (reference 03) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css