

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW H DAVID SR
Claimant

APPEAL NO. 11A-UI-06320-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 03/20/11
Claimant: Respondent (4-R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 5, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on June 9, 2011. Claimant did not respond to the hearing notice instructions and did not participate. Employer participated through Sara Fiedler.

ISSUE:

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer and whether claimant is able to and available for work between March 20, 2011 and April 30, 2011.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked temporary full-time as a laborer at Regalia and was separated from employment on March 15, 2011. The client notified Team Staffing claimant called to report he had a non-work-related medical issue (carpal tunnel) and could not work. On April 29, 2011 he was released to return to full duty and provided the release to the employer. There was no work available to him. The next contact was on May 9, 2011 to indicate availability for any shift. The claimant received benefits for the six weeks ending April 30, 2011. He was also paid benefits for the two weeks ending May 14, 2011 and was denied benefits because of excessive wages the week ending May 21, 2011. No claims were filed thereafter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment for no disqualifying reason.

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.

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 § 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 § 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.

Since the claimant returned to work from the non-work-related injury without restriction and no work was available, the separation was with good cause attributable to the employer.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as

defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

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.

871 IAC 24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the claimant was paid benefits for the six weeks ending April 30, 2011 when he was not medically able to work, he is not entitled to benefits for those weeks. The issue of the calculation of overpayment of benefits for those weeks is remanded.

DECISION:

The May 5, 2011 (reference 01) decision is modified in favor of the appellant. The claimant was not medically available for work through April 30, 2011 and is not eligible for benefits for those six weeks. He was laid off due to a lack of work effective May 1, 2011. Benefits are allowed effective May 1, 2011, provided the claimant is otherwise eligible.

REMAND:

The benefit overpayment issue delineated is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs