IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KEVIN R JAURON
Claimant

STREAM INTERNATIONAL INC
Employer

APPEAL NO. 10A-UI-02816-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/17/10
Claimant: Respondent (1)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 10, 2010 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 12, 2010. Claimant participated and was represented by Mary Hamilton, Attorney at Law. Employer participated through human resources generalist Staci Albert, human resources manager Debbie Nelson, and associate general counsel Matthew Ebert. Employer's Exhibit 1 was admitted to the record. Claimant's Exhibit A was admitted to the record.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or if he was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as an incoming call customer service representative (CSR) and was separated from employment on January 12, 2010. On April 10, 2009 Jason Jones, M.D. wrote of claimant's preexisting eye injury, "This injury to the left eye significantly impairs his ability to function visually and may require some adaptation of his work unit because he has decreased binocular function." (Claimant's Exhibit A, page 1) His job required a significant amount of reading on computer screens and asked employer for more time on the phone, a larger screen, and a different keyboard. All were denied. Claimant also provided to the employer the October 8, 2009 letter from Dr. Jones reiterating the need for accommodation of the injury by allowing more time to perform his job duties. (Claimant's Exhibit A, page 2) His last day of work was November 3, 2009. He had taken Family Medical Leave Act (FMLA) time off from work in January 2008 due to depression and his wife's Chronic Obstructive Pulmonary Disease (COPD) but had up to 480 hours remaining of Family Medical Leave Act (FMLA) leave time although neither party was certain about the specific number of hours available. Claimant wrote a letter to the employer on January 12, 2010 outlining "Reasons Why" "For My Depression" (Employer's Exhibit 1, pages 5 and 6) and also gave employer another note with the same date stating, "The reason that I am quitting is I put on

paper and if we can at least get of this or some of it as an agreement I'll come back." (Employer's Exhibit 1, page 4) Employer could or would not meet the demands and accepted the resignation. On January 29, 2010 Michael Jennings, M.D. wrote that he had seen claimant for depression multiple times at the end of November and beginning of December 2009 and noted his work was contributing to his depression, and advised him to quit and find other work. (Claimant's Exhibit A, page 8)

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.

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 the 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.

The claimant has not established that the injury was caused by the employment but did establish that the medical condition would be aggravated by the work duties, which are permanently prohibited by the medical restrictions. Furthermore, the treating physician specifically advised claimant not to return to work.

While a claimant must generally return to offer services upon recovery, subparagraph (d) of Iowa Code § 96.5(1) is not applicable where it is impossible to return to the former employment because of medical restrictions connected with the work. See *White v. EAB*, 487 N.W.2d 342 (Iowa 1992). Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. *Shontz v. IESC*, 248 N.W.2d 88 (Iowa 1976). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. *Raffety v. IESC*, 76 N.W.2d 787 (Iowa 1956).

Because claimant’s medical condition was aggravated by the working conditions, the decision not to return to the employment according to his physician’s advice was not a disqualifying reason for the separation.

DECISION:

The February 10, 2010 (reference 01) decision is affirmed. The claimant voluntarily left his employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs