

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANNY E CARR
Claimant

APPEAL NO: 09A-UI-15874-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEOKUK COUNTRY CLUB
Employer

OC: 08/23/09
Claimant: Appellant (1)

Section 96.5-1-d – Voluntary Quit/Non-Job Related Illness
871 IAC 24.25(35) – Illness Recovery/Job Duties
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a department decision dated October 13, 2009, reference 01 that held he voluntarily quit without good cause due to a non-job-related illness on July 13, 2009, and benefits are denied. A telephone hearing was held on November 24, 2009. The claimant participated. Nancy Symmonds, Manager, participated for the employer. Official Notice was taken of claimant's appeal documents.

ISSUE:

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began work on May 16, 1974, and last worked for the employer as a full-time greens superintendent on July 13, 2009. The claimant's job description requires him to live in a house on the employer's premises without payment for rent or utilities during his employment. Among the claimant's job duties, he is to care and maintain the golf course and grounds; hire, supervise and direct the employee's work assignments.

The claimant suffered a stroke on July 13, 2009 and was transported to Iowa City hospital for treatment. He was placed on non-work paid status to September 1. The employer received doctor statements from his local physician (Hicks) dated August 19, and his Iowa City physician (Callison) dated September 2nd that released him to work with restrictions that would not permit him to work his regular, full-time job. The employer could not provide accommodations to have other employees supervise claimant, and his return to work was denied.

The claimant moved from the employer house on or about November 1st. The claimant met with the employer on November 2nd and requested to return to work as a part-time employee. The employer took the request under advisement pending the receipt of medical evidence from the claimant he could return to work. Doctors Hick and Callison on November 6 and 13 have released the claimant to return to work without restriction. The employer recently received notice the claimant has filed a worker's compensation claim.

REASONING AND CONCLUSIONS OF LAW:

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.

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 section 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 section 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.

The administrative law judge concludes that the claimant voluntarily left employment without good cause due to a non-job-related stroke on July 13, 2009, and upon recovery, did not return to his employer to offer his full-time employment services on November 2nd.

The employer's testimony that the claimant offered to return as a part-time employee on November 2nd is credible based on the claimant having moved from the house provided by the employer as a condition of employment. Since the claimant did not pay rent or utilities, it is considered a substantial breach of his contract for hire and an indication he no longer wanted to be considered as a full-time employee.

Iowa Code section 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".

The administrative law judge further concludes the claimant was not able and available for his full-time, regular job from the date of his stroke on July 13, 2009 until he received an unrestricted doctor's release to return to work on November 6, 2009. The claimant is eligible for benefits effective November 8, 2009, provided he is otherwise eligible.

DECISION:

The department decision dated October 13, 2009, reference 01, is affirmed. The claimant voluntarily quit without good cause attributable to the employer effective November 2, 2009, when he recovered from his non-job-related illness and failed to return to work and offer his services, as a full-time employee. The claimant is not able and available for the period from July 13, 2009 to November 6, as he could not perform unrestricted work as a full-time employee for his employer. The availability restriction is removed effective November 8, 2009, as the claimant is now able and available for work based on medical evidence.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs