

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KOSSI J EVIGLO**  
Claimant

**APPEAL NO. 10A-UI-14164-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JOHN MORRELL & CO**  
Employer

**OC: 05-09-10**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 8, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 29, 2010. The claimant did participate and was represented by Dennis M. McElwain, Attorney at Law. The employer did participate through Kathy Peterson, Human Resources Representative. Claimant's Exhibits One through Four were entered and received into the record.

**ISSUES:**

Did the claimant voluntarily quit his employment without good cause attributable to the employer or was he discharged due to job-related misconduct?

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a production worker, full-time, beginning November 19, 2001, through August 24, 2010, when he was discharged.

The claimant sustained a work-related injury to his shoulder that resulted in work restrictions from his treating physician that he not work in a cold environment due to his chronic medical condition. (CI Ex. 3). The employer runs a business where the entire work environment is cold due to the nature of their business. As a result, the employer was not able to accommodate the claimant's work restrictions. The claimant was discharged by the employer when they could not accommodate his work restrictions. The claimant is able to perform a variety of jobs, so long as they are not in a cold or refrigerated environment.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no work-related misconduct.

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.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

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).

The claimant's work restrictions were due to the employer's inability to accommodate his work restrictions that were due to a work related chronic injury. Under such circumstances, the claimant's discharge was not due to any job connected misconduct on his part and benefits are allowed, provided the claimant is otherwise eligible. Since the claimant is able to work outside of a cold environment, he is able to and available for work.

**DECISION:**

The October 8, 2010, reference 01, decision is reversed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw