

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**PANE LOVAN**

Claimant

**APPEAL 17A-UI-02499-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AVENTURE STAFFING & PROFESSIONAL**

Employer

**OC: 10/16/16**

**Claimant: Appellant (4)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 27, 2017, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 29, 2017. Claimant participated. Employer participated through chief risk officer Cyd Fleckenstein. Toni Holguni registered for the hearing on behalf of the employer, but did not attend the hearing. Official notice was taken of the administrative record of claimant's benefit payment history, with no objection.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed temp-to-hire full-time as a laborer last assigned at Morton Buildings from May 9, 2016, and was separated from the assignment, but not the employment, on October 13, 2016. Morton Buildings told the employer that claimant's assignment was ending due to claimant failing a physical. On October 13, 2016, the employer did not have any assignments available for claimant in the Spencer area. The employer told claimant that they would continue looking for assignments for him.

On October 31, 2016, claimant called the employer and stated he was under the weather, but wanted to check if there were any assignments available. The employer told claimant it did not have any assignments available for him in the Spencer area at that time.

On November 2, 2016, the employer contacted claimant and offered him an assignment. Claimant stated he was unable to work at that time due to his illness. Claimant told the employer he would stay in touch and contact the employer when he wanted the employer to find him work. Claimant was not able to work because of his illness.

Claimant has not returned to the employer to request an additional assignment. Claimant never provided a doctor's note to the employer regarding his illness. The only documentation the employer ever got regarding claimant's illness was a document dated March 2, 2017 that was

provided by Iowa Workforce Development. Claimant is not able to work due to his illness and medical treatment.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant is separated from the employment without good cause attributable to 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.

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 Admin. Code r. 871-24.25(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 court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Subsection d of Iowa Code § 96.5(1) provides an exception. The statute specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is *fully* recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346; *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n.*, 468 N.W.2d 223, 226 (Iowa 1991) (noting the full recovery standard of section 96.5(1)(d)). In the *Gilmore* case he was not fully recovered from his injury and was unable to show that he fell within the exception of section 96.5(1)(d). Therefore, because his injury was not connected to his employment and he had not fully recovered, he was considered to have voluntarily quit without good cause attributable to the employer and was not entitled to unemployment benefits. See *White*, 487 N.W.2d at 345; *Shontz*, 248 N.W.2d at 91.

Claimant has not established that his medical condition was work related; thus, he must meet the requirements of the administrative rule cited above. October 31, 2016, was the last time claimant contacted the employer and indicated he was still looking for an additional assignment. On November 2, 2016, the employer contacted claimant and offered him an assignment, but he declined the assignment and told the employer he was unable to work due to his illness and he would contact the employer when he became able to work. Since, November 2, 2016, claimant has been unable to work and he has not returned to the employer to request an additional assignment. Accordingly, although the separation was for good personal reasons, it was without good cause attributable to the employer and benefits must be denied effective October 30, 2016.

#### **DECISION:**

The February 27, 2017, (reference 03) unemployment insurance decision is modified in favor of the appellant. Claimant is separated from the employment without good cause attributable to employer on November 2, 2016. Benefits are denied effective October 30, 2016. Benefits are withheld until such time as claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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