

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JOSHUA A MEYER
Claimant

APPEAL NO: 18A-UI-01359-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF WATERLOO FINANCE DEPT
Employer

OC: 12/17/17
Claimant: Appellant (5)

Iowa Code Section 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 17, 2018, reference 01, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 23, 2018. The claimant participated in the hearing with Attorney David Hosack. Cheryl Huddleston, Human Resources Manager and Patrick Trebar, Chief of Fire Services, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his position due to a non-work related injury or illness.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time fire fighter for the City of Waterloo June 24, 2008. He suffered a non-work related knee injury July 31, 2017, and has not yet received a full medical release from the treating physician. He was placed on a disciplinary layoff by the employer December 18, 2017, following his arrest for operating under the influence and refusal to submit to a breathalyzer test. As a result of his refusal to take a breathalyzer test, the claimant lost his driver's license from December 5, 2017 through December 5, 2018. As a member of the fire department, the claimant is required to have a current, valid driver's license in order to perform the essential functions of his job.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.5-1-d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 claimant has not been released to return to full work duties and the employer is not obligated to accommodate a non-work related medical condition. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The January 17, 2018, reference 01, decision is modified with no effect. The claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible or until such time as the claimant obtains a full release without restriction to return to regular duties, offers services to the employer, and the employer has no comparable, suitable work available.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn