

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT L LOCKHART
Claimant

APPEAL NO. 07A-UI-03562-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTAFF USA INC
Employer

**OC: 12/17/06 R: 03
Claimant: Appellant (1)**

Section 96.5(1)(d) – Medically Based Voluntary Separation

STATEMENT OF THE CASE:

Robert Lockhart filed a timely appeal from the March 28, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 23, 2007. Mr. Lockhart did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Vicki Matthias, Branch Manager, represented Westaff USA.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Lockhart commenced his employment relationship with Westaff USA temporary employment agency on August 30, 2005 and has had ten assignments at two different locations. On January 17, 2007, Mr. Lockhart commenced a full-time assignment at Bertch Cabinets. Westaff USA was aware that Mr. Lockhart had an ongoing, non-work-related knee problem. On February 5, 2007, Mr. Lockhart advised Westaff USA that he had spoken to his supervisor at Bertch Cabinets and had informed the supervisor that he needed to undergo surgery on his knee. Mr. Lockhart had an agreement with his supervisor at Bertch Cabinets that he would be able to commence a new assignment at Bertch Cabinets after he underwent surgery and had been granted a full release to return to work. On February 9, 2007, Mr. Lockhart voluntarily separated from the assignment at Bertch Cabinets so that he could undergo surgery on his knee. Mr. Lockhart underwent the knee surgery on or about February 12. On April 2, 2007, Mr. Lockhart was released to return to work without restrictions. On April 3, Mr. Lockhart commenced a new assignment at Bertch Cabinets. Mr. Lockhart continues in that new assignment.

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 24.26(6)a 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.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

Because Mr. Lockhart failed to appear for the hearing, the evidence in the record is limited to the testimony of Branch Manager Vicki Matthias. The evidence in the record indicates that Mr. Lockhart voluntarily separated from his assignment at Bertch Cabinets on February 9, 2007, upon the advice of a physician, so that he could undergo surgery on his knee for a non-work-related medical condition. The evidence indicates that Mr. Lockhart properly notified Westaff USA and Bertch Cabinets of the need to separate from the employment so that he could undergo surgery on his knee. The evidence indicates that Westaff USA and Bertch Cabinets consented to the absence. The evidence indicates that once Mr. Lockhart had been released return to work without restrictions, Westaff USA and Bertch cabinets returned Mr. Lockhart to a full-time assignment at Bertch Cabinets. While Mr. Lockhart had compelling personal reasons to separate from the assignment on February 9, 2007, the evidence in the record indicates that Mr. Lockhart's voluntary separation from the assignment on that date was not for good cause attributable to the employer. Accordingly, Mr. Lockhart is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount subsequent to the February 9, 2007 separation date.

DECISION:

The claims representative's March 28, 2007, reference 01, decision is affirmed. The claimant voluntarily separated from his temporary employment assignment on February 9, 2007, without good cause attributable to the employer. The claimant is disqualified for benefits until he has

worked in a been paid wages for insured work equal to ten times his weekly benefit amount since the February 9, 2007 separation.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css