

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J WILSON
Claimant

APPEAL NO. 08A-UI-00035-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 11/18/07 R: 03
Claimant: Appellant (5-R)

Iowa Code section 96.4(3) – Able & Available
871 IAC 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Michael Wilson filed a timely appeal from the December 21, 2007, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on January 16, 2006. Mr. Wilson participated. Amanda Albaugh, Human Resources Representative, represented the employer and presented testimony through Kimber Dall, Human Resources Technician. The administrative law judge received Exhibit A into evidence. The administrative law judge took official notice of the November 21, 2007, reference 01, decision that authorized department approved training and benefits, provided the claimant was otherwise eligible.

ISSUE:

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

Whether the claimant has separated from the employment for a reason that disqualifies him from unemployment insurance benefits or is on an approved leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Wilson commenced his full-time employment with Target on February 13, 2003. Mr. Wilson worked in the employer's distribution warehouse, where he moved freight manually and by means of a forklift. Mr. Wilson last performed work for the employer on April 30, 2007. Prior to that date, Mr. Wilson had been experiencing increased back pain. Mr. Wilson has a history of back pain.

On May 1, 2007, Mr. Wilson requested a leave of absence. Mr. Wilson met with Kimber Dall, Human Resources Technician, to discuss the requested leave and to complete leave application paperwork. Mr. Wilson completed an application for leave under the Family and Medical Leave Act (FMLA). Mr. Wilson also completed an application for paid medical leave under the employer-sponsored short-term disability leave program. Ms. Dall provided Mr. Wilson with the appropriate medical certification forms for Mr. Wilson to take to his doctor.

In the process of discussing the requested leave, Ms. Dall asked Mr. Wilson whether his back issues were work-related. Mr. Wilson indicated they were not. Ms. Dall told Mr. Wilson that once he went on leave for a non-work-related medical condition, the employer would require a full medical release before Mr. Wilson would be allowed to return to work.

On May 4, Mr. Wilson's doctor completed the medical certification form and Mr. Wilson returned the completed form to Ms. Dall. Mr. Wilson's doctor indicated that Mr. Wilson suffered from myalgias, or muscle pains. The doctor indicated that Mr. Wilson was being referred to a rheumatologist and that Mr. Wilson was unable to perform work as of April 30, 2007. The doctor did not list specific medical restrictions. Instead, the doctor indicated that Mr. Wilson was unable to return to work at that time. Ms. Dall advised Mr. Wilson that he was approved for FMLA leave and approved for paid medical leave, effective April 30, 2007. Ms. Wilson told Mr. Wilson that the paid medical leave approval was good for 30 days and that if he were unable to return to work at that time, he would need to provide an additional medical certification of his need to be off work to continue his paid medical leave.

When the initial 30-day leave period was about to expire, Mr. Wilson did not contact the employer. Instead, Ms. Dall contacted Mr. Wilson. Mr. Wilson's doctor provided an updated medical certification, which the employer received on June 19, 2007. The doctor had diagnosed "lumbar dssr syndrome." The doctor indicated that the plan of treatment included rest, medications, and a referral to a pain clinic. The doctor indicated that Mr. Wilson's condition was both chronic and recurrent. The doctor listed medical restrictions that limited Mr. Wilson to two hours per day of the following activities: standing, keyboarding, driving and/or climbing, bending, stooping. The doctor also imposed a 10-pound lifting restriction. The doctor indicated that Mr. Wilson's return to work date was still undetermined. Ms. Dall notified Mr. Wilson that he was approved for an additional 30 days of paid medical leave. Ms. Dall again notified Mr. Wilson of his obligation to contact the employer and provide recertification paperwork if he were unable to return to work in 30 days.

When the 30-day leave extension was about to expire, Mr. Wilson again did not contact the employer. Instead, Ms. Dall contacted Mr. Wilson. Mr. Wilson indicated he needed to continue on leave. On July 23, Mr. Wilson's doctor completed recertification paperwork, which the employer received on July 26. The certification paperwork indicated that Mr. Wilson still suffered from back pain and was consulting with a pain clinic. In addition, the paperwork indicated that Mr. Wilson had recently suffered a heart attack. The doctor indicated that Mr. Wilson was unable to carry, push, or pull anything, and was restricted from climbing, bending or stooping. The doctor indicated that Mr. Wilson was limited to standing and/or keyboarding two hours per day. The doctor indicated that Mr. Wilson's return to work date was still undetermined. On July 26, Ms. Dall notified Mr. Wilson that he was approved for another 30-day extension of the paid leave. Ms. Dall also reminded Mr. Wilson of the employer's "reinstatement right policy." The employer intended to comply with the FMLA requirements regarding reinstatement. The employer's policy extended the reinstatement right one additional month. If Mr. Wilson returned to the employment within four months of commencing his leave, the employer would allow him to return to his former work at the distribution center.

On August 8, Ms. Dall contacted Mr. Wilson to discuss the fact that his short-term disability benefits would expire once he had been away from the employment for five months. Ms. Dall notified Mr. Wilson that he could apply for long-term disability benefits. During this conversation, Mr. Wilson indicated for the first time the possibility that his back problems might be work-related. Ms. Dall promptly arranged for Mr. Wilson to meet with the employer's on-site nurse. Mr. Wilson then notified Ms. Dall that he wished to consult with his doctor and/or lawyer before proceeding with either the application for long-term disability benefits or initiating a

workers' compensation claim. The employer left it to Mr. Wilson to decide how he wanted to proceed.

In August, Mr. Wilson understood that he was not able to return to work. Mr. Wilson enrolled in full-time college coursework. Mr. Wilson was motivated, in part, by the desire to obtain student loan money.

At the beginning of September, Ms. Dall again contacted Mr. Wilson with regard to an extension of his paid leave. On September 4, Mr. Wilson's doctor provided updated medical information, which the employer received on September 5. The doctor indicated that Mr. Wilson had lumbar disc syndrome and acute cardiac disease. The doctor indicated that Mr. Wilson was participating in physical therapy, was receiving lumbar injections, and that Mr. Wilson was still not able to return to work. The doctor provided no specific medical restrictions. On September 5, Ms. Dall notified Mr. Wilson that he was approved for a final 30-day extension of his paid medical leave. Ms. Dall also notified Mr. Wilson that unless he was approved for long-term disability benefits, he would need to commence an unpaid leave if he was unable to return to work. On September 28, Mr. Wilson's leave transitioned from paid to unpaid. Mr. Wilson had not yet notified the employer whether he wished to submit an application for long-term disability benefits or whether he wanted to pursue a worker's compensation claim.

At the beginning of October, Mr. Wilson notified Ms. Dall that he wished to proceed with the application for long-term disability benefits and had decided to forgo a workers' compensation claim. Ms. Wilson completed the appropriate application. Mr. Wilson's doctor provided updated medical information. The doctor indicated that Mr. Wilson was unable to return to work and did not list specific medical restrictions. Ms. Dall submitted Mr. Wilson's application for long-term disability benefits. Ms. Dall notified Mr. Wilson that his unpaid leave would expire on January 27, 2008.

At the beginning of November, Mr. Wilson's doctor again provided updated medical information that indicated Mr. Wilson's condition had not changed. Ms. Dall again reminded Mr. Wilson that his leave authorization would end on January 27, 2008.

Mr. Wilson established a claim for unemployment insurance benefits that was effective November 18, 2007. On November 21, an Agency representative entered a reference 01 decision that approved Department Approved Training and authorized benefits, provided Mr. Wilson was otherwise eligible for benefits.

On December 1, Ms. Dall sent Mr. Wilson another medical certification form, which Mr. Wilson's doctor completed. On December 15, Ms. Dall notified Mr. Wilson that he was approved for another 30 days of unpaid leave. Ms. Dall also notified Mr. Wilson that he was approaching the maximum duration of his authorized unpaid leave.

Mr. Wilson is no longer consulting with a doctor regarding his back or heart. Mr. Wilson had not received any updated medical restrictions beyond those he provided to the employer. Mr. Wilson has not sought other employment.

REASONING AND CONCLUSIONS OF LAW:

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".

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Where a claimant requested and was granted a leave of absence, the leave period is deemed to be a period of voluntary unemployment and the claimant is ineligible for unemployment insurance benefits during the leave period. 871 IAC 24.23(10).

871 IAC 24.22(2)(j) provides as follows:

Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The weight of the evidence indicates that Mr. Wilson requested and was approved for a leave of absence that he commenced on May 1, 2007. The greater weight of the evidence indicates that the leave of absence is based on chronic non-work-related medical conditions. The evidence indicates that Mr. Wilson requested several extensions of the leave of absence and continues on an authorized leave of absence that is scheduled to end on January 27, 2008. Under the law cited above, the administrative law judge concludes that Mr. Wilson's leave period constitutes a period of voluntary unemployment. Accordingly, Mr. Wilson has not been eligible for benefits since establishing his claim for benefits.

The weight of the evidence also indicates that Mr. Wilson has been unable to engage in gainful employment since he established his claim for benefits. The evidence indicates that Mr. Wilson continues to suffer from significant physical health issues that prevent him from performing gainful work. The evidence indicates that Mr. Wilson's serious medical condition is, at this point, going unmonitored and untreated by a medical professional. Because Mr. Wilson has not been able to work since establishing his claim for benefits, Mr. Wilson has not been eligible for benefits and continues to be ineligible for benefits.

Contrary to the conclusion set forth in the December 21, 2007, reference 02 decision, the evidence in the record fails to establish a voluntary quit has occurred up to this point. This matter will be remanded to a claims representative for a determination of whether there has been a permanent separation from the employment on or after January 27, 2008 and whether that separation disqualifies Mr. Wilson for unemployment insurance benefits.

DECISION:

The Agency representative's December 21, 2007, reference 02, is reversed insofar as the decision indicated a permanent separation from the employment had occurred. The reference 02 decision is otherwise modified as follows. The claimant has been on an approved leave of absence since May 1, 2007. The claimant has not been able to work and available for work since establishing his claim for benefits. The claimant has been ineligible for benefits

since he established his claim and continues to be ineligible for unemployment insurance benefits.

This matter is remanded to a claims representative for a determination of whether there has been a permanent separation from the employment on or after January 27, 2008 and whether that separation disqualifies Mr. Wilson for unemployment insurance benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw