BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

DANIEL T GREEN

Claimant,

and

WINEGARD COMPANY

Employer.

HEARING NUMBER: 12B-UI-11190

EMPLOYMENT APPEAL BOARD DECISION

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1-D, 96.4-3

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Daniel Green (Claimant) was hired to work at Winegard Company (Employer) on December 4, 2006, as a full-time assembler. The Claimant last worked on April 30, 2010. On May 3, 2010, the Claimant provided a doctor’s note indicating he could no longer work. The Claimant completed documentation for short term disability leave. After short-term disability, the Claimant applied for and was granted long-term disability. Once the long-term disability had been exhausted the Claimant was terminated by the Employer. (Rec. at 13:30-40). The Claimant has not been released to return to work by his physician.

REASONING AND CONCLUSIONS OF LAW:

Summary: We find that the Claimant did not quit and is not disqualified for quitting. We nevertheless deny benefits because the Claimant is not able and available for work.

Quit versus Discharge: The Administrative Law Judge found that the Claimant quit for good cause when the Employer fired the Claimant once the Claimant's disability leave ran out. We see this as a termination not a quit. "[Q]uitting requires an intention to terminate employment accompanied by an overt act carrying out the intent." *FDL Foods, Inc. v. Employment Appeal Board*, 460 N.W.2d 885, 887 (Iowa App. 1990), *accord Peck v. Employment Appeal Board*, 492 N.W.2d 438 (Iowa App. 1992); *Kern v. Employment Appeal Board*, No. 4-774 / 04-0179 (Iowa 12/22/2004). The Claimant here requested and was granted leave, and when that leave ran out he was fired. Under similar circumstances the Iowa Court of Appeals has recently found no disqualification can be imposed based on the *nature of the separation*. In *Prairie Ridge Addiction Treatment Services v. Jackson & EAB*, 11-0784 (Iowa App. January 19, 2012) a claimant went on leave for non-work related injuries. At the end of leave she was not yet able to do all her duties and asked for extended leave. Instead the facility fired her, citing the lack of additional leave. The Court of Appeals found that this was a termination not a quit and that it was not disqualifying. *Prairie Ridge*, plus the simple fact that the Claimant did not intend to quit by asking for leave, leads us to conclude that the Claimant did not quit. Given this he can only be disqualified based on the nature of the separation if he was fired for misconduct. It takes little analysis to conclude that having an injury and going on an approved leave with the knowledge of the Employer is not misconduct. It is certainly not a "willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in the carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer." 871 IAC 24.32(1)(a)(defining misconduct). Thus the Claimant is not disqualified based on the nature of the separation. *See* 871 IAC 24.22(2)(j)(1)("If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the individual, the individual is considered laid off and eligible for benefits."). We find that the separation was not disqualifying.

Conclusion on Separation: The Employer has not proven by a preponderance that the Claimant quit. The Employer has not proven that the termination was for misconduct. The Claimant is not disqualified based on the nature of the separation from employment.

Availability: Although we have ruled the Claimant did not quit this does not mean he will receive benefits. Based on the record we agree with the Administrative Law Judge that the Claimant is not able and available for work and affirm the Administrative Law Judge's disposition of this issue for the reasons set out by the Administrative Law Judge. The Claimant is ineligible for benefits from May 3, 2010 until such time as he can demonstrate that he is available for work assuming he is at that time otherwise eligible.

DECISION:

The administrative law judge's decision dated October 12, 2012 is **REVERSED IN PART AND AFFIRMED IN PART**.

The Employment Appeal Board concludes that the Claimant was not separated from employment in a manner that would disqualify the Claimant from benefits. Any disqualification based on the separation is removed.

The Employment Appeal Board concludes that the Claimant was not able and available for work from May 3, 2010 until such time as he can demonstrate that he is available for work. Accordingly, the Claimant is denied benefits from May 3, 2010 until such time as he can demonstrate his availability if he is at that time otherwise eligible.

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John A. Peno

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Monique F. Kuester

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Cloyd (Robby) Robinson

A portion of the Claimant's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence (documents) were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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John A. Peno

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Monique F. Kuester

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Cloyd (Robby) Robinson

RRA/fnv