

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN M RAUSCH**  
Claimant

**APPEAL NO. 12A-UI-02460-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALUM LINE INC**  
Employer

**OC: 01/15/12**  
**Claimant: Respondent (5-R)**

Section 96.5-2-a – Discharge  
Section 96.4-3 – Able and Available  
871 IAC 24.23(1) – Unable to Work/Illness or Injury

**STATEMENT OF THE CASE:**

The employer appealed from a representative's decision dated March 2, 2012, reference 02, that held claimant left work due to illness or injury on January 17, 2012, and which allowed benefits. A hearing was held on March 28, 2012. The claimant participated personally and was represented by Eric Fern, attorney at law. Gary Gooder, president, and Jeff McAllister, operations manager, participated for the employer. Claimant Exhibits 1 through 4, and Employer Exhibits A through E was received as evidence.

**ISSUES:**

Whether claimant was discharged for misconduct in connection with employment.

Whether claimant is able and available to work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the witness testimony and having considered the evidence in the record, finds that: The claimant was hired by the employer as a full-time welder after he had passed a pre-employment physical. He had suffered a serious neck injury in an accident about seven to eight years prior to this employment.

In January, claimant began suffering headaches related to his neck injury and he went to the doctor at the Gunderson Lutheran clinic. He was given a medical excuse on January 13 for missing work the day of before, which he provided to a supervisor. He was seen for a follow-up exam at the clinic on January 16. The exam revealed claimant has a chronic posterior neck condition that requires future surgery with work restrictions that limits lifting to 20 pounds, and no repetitive bending, stooping or twisting.

Claimant advised the employer about the doctor exam and reported for work on January 17. He was told not to clock in and go home by a supervisor. Later, he signed an employment termination from that he checked as "laid-off". The employer's president acknowledged the

claimant did not sign the form in his presence. The operations manager had told the claimant the employer could not hold his job open, and he could re-apply when he was able to return to work.

Claimant had neck surgery on March 7 and he has been restricted to light-duty work. He has been denied social security disability with the determination he is able to perform gainful employment for jobs he has experience and training.

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

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The administrative law judge concludes the employer failed to establish claimant was discharged for misconduct on January 17, 2012.

When the employer learned on January 17 claimant would not be able to perform work due to a pre-employment injury with prospective surgery, he was terminated from employment. The employer did not offer claimant a leave of absence due to his injury, but told him it could not hold his job open and he could reapply for a job when he was able to work. The employer's response to claimant is an employment termination, not a voluntary quit. There is no act of misconduct for being physically unable to perform work.

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 24.23(21) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(21) Where availability for work is unduly limited because the claimant is waiting to go to work for a specific employer and will not consider suitable work with other employers.

The administrative law judge further concludes that claimant is able and available to perform work though his current light-duty restriction(s) preclude him from working as a welder.

The law does not require claimant to be able to perform work in his previous welding job but he must be able to do some gainful employment. The social security disability denial letter establishes this premise.

**DECISION:**

The representative's decision dated March 2, 2012, reference 02, is modified. The claimant was not discharged for misconduct on January 17, 2012. The claimant is able and available for work. Benefits are allowed, provided claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw