

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHAD A JETT**  
Claimant

**APPEAL NO. 14A-UI-00593-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALTER TRADING CORPORATION**  
Employer

**OC: 12/22/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Chad Jett (claimant) appealed a representative's January 10, 2014, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Alter Trading Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 10, 2014. The claimant participated personally and through Sara Stahmer, guidance counselor. The employer was represented by Diana Perry-Lehr, Hearings Representative, and participated by Stephanie Pimmel, Corporate Human Resources Manager, and David Huntley, Truck Maintenance.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 17, 2011, as a full-time maintenance mechanic. The claimant requested and was granted Family Medical Leave (FMLA) from August 16 through November 8, 2013. The claimant was still in treatment and unaware of how to request an extension of his leave. The employer left a voice mail on the claimant's counselor's office number that the counselor did not receive. They faxed a form to her office for extension of the leave that the counselor did not receive. The employer did not mail the form to the claimant. On December 11, 2013, the employer terminated the claimant for not being able to return to work when his FMLA ended. The claimant filed for unemployment insurance benefits with an effective date of December 22, 2013. The claimant was released to return to work without restrictions on December 27, 2013.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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 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. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The claimant is eligible for unemployment insurance benefits. Issues surrounding separations of employment for medical reasons and subsequent entitlement to unemployment insurance benefits are among the most challenging in unemployment insurance law. The evidence in this case showed that the claimant was unable to return to work until shortly after he had exhausted his FMLA leave. By the time his doctor permitted him to return to full-time work on December 27, 2013, he had already been terminated by the employer. This is a non-disqualifying discharge and the claimant is eligible for unemployment insurance benefits provided he meets all other eligibility requirements.

871 IAC 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was in treatment through December 27, 2013. He is considered to be unavailable for work through the week ending December 28, 2013. The claimant is disqualified from receiving unemployment insurance benefits through the week ending December 28, 2013, due to his unavailability for work. He is able and available for work after December 28, 2013.

**DECISION:**

The representative's January 10, 2014, decision (reference 02) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed. The claimant is disqualified from receiving unemployment insurance benefits through the week ending December 28, 2013, due to his unavailability for work.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs