

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JIMMY G VEGAS**

Claimant

**APPEAL NO. 10A-UI-09813-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 05/16/10**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

Section 96.4-3 – Able to and Available for Work

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated June 17, 2010, reference 01, that concluded the claimant had completed his temporary work assignment. A telephone hearing was held on August 22, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Holly Carter participated in the hearing on behalf of the employer. The parties agreed that the issue of whether the claimant was able to and available for work could be considered and decided. The record was left open to obtain information from his medical provider regarding his ability to work. The claimant's retreating physician assistant submitted a completed questionnaire regarding the claimant's ability to work. The questionnaire was sent to the employer and claimant for objections. No objections were received by the deadline of September 22, 2010. Exhibit 1 and A were admitted into evidence.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?

Was the claimant able to and available for work?

**FINDINGS OF FACT:**

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. He began work for the employer May 1, 2009, on an assignment at Jack Links Beef Jerky. His last day of work was May 17, 2010.

The claimant was absent several times due to health and other problems but notified the employer about his absences. After he called in sick on May 18 and 19, Jack Links informed the employer that it wanted him removed from the assignment. A staffing representative spoke to the claimant on May 19 and informed him that he was being removed from the assignment due to absenteeism.

The claimant reported to the staffing office on May 20, to turn in his badge and locker keys. He asked the staffing representative if they had any work on a part-time basis because he believed

he would be able to handle it better. The representative said they did not have anything at that time.

The claimant was diagnosed with diabetes and hypertension at the end of May 28, and was prescribed medication for those problems, which has improved his condition. Later, in August 2010, he was diagnosed and treated for hepatitis. A biopsy was done on his liver for that condition on August 9, 2010, but his liver was determined healthy. The physician's assistant treating the claimant for hepatitis states that he was restricted from lifting over 10 pounds for seven days after the biopsy but had no other work restrictions based on having hepatitis.

The claimant has worked both full time and part time during his base period. He worked full time for the employer and part time for Quality Processing.

The claimant has been actively seeking work, including work as a warehouse worker and auto parts sales person. His condition has improved and he was willing to accept work if offered.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code section 96.5-1 and 96.5-2-a. The claimant never quit his employment. His removal from his assignment with Jack Links was not for work-connected misconduct as defined by the unemployment insurance law since his final absences were due to illness and were properly reported. 871 IAC 24.32(1).

The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that requires long hours and heavy lifting. The rules provide that a claimant must be able to work to the same extent as when his wages credits were accrued. 871 IAC 24.22(2)f. In the claimant's case the wages that his claim is based on were from both full-time and part-time work. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and the claimant has been actively looking for such work in compliance with the requirements of the law.

**DECISION:**

The unemployment insurance decision dated June 17, 2010, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs