

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

DAVID L STARN

Claimant,

and

SEDLACEK'S INC

Employer.

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HEARING NUMBER: 11B-UI-11174

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

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: 96.4-3, 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED AS PER THE BOARD'S DECISION

The Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. With the following modification, the majority members of the Appeal Board find the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Employment Appeal Board makes the following modification to the administrative law judge's reasoning and conclusions of law:

Strike all the reasoning and conclusions from the sentence "Thus, the separation was a discharge".

Insert immediately before the Decision the following:

In case 11A-UI-08395, a decision that has now become final, the Board ruled that the Claimant had left work due to a non-work health condition and would be disqualified until he returned with a full release. This decision is binding and we now are focused on determining when the Claimant returned with a full release. Benefits will be allowed

from that date, or from the date of full release if the Claimant was excused from returning.

As we have found the Claimant was already separated by the Employer, because no work was available, back in July. The Claimant was then fully released on September 27, 2011. (Tran at p. 6). He did not present the release to the Employer until October 10. (Tran. at p. 7). This delay in presentation has no effect, however. The Claimant was permanently separated by the Employer back on July 12, due to being replaced. (Tran at p. 10). Iowa Code §96.5(1)(d) does not require a claimant to return to the employer to offer services after a medical recovery or release if it is clear the endeavor would be pointless. *Porazil v. IWD*, 2003 WL 22016794, No. 3-408 (Iowa Ct. App. Aug. 27, 2003); c.f. I. R. App. Pro. 6.14(5)“b”(unpublished opinions may be cited but are not controlling authority).

Putting this together the Claimant is allowed benefits from the date of his full release on September 27, 2011. He is clearly able and available as of that date. Availability before that time is moot since the Claimant is disqualified until that date and we have no indication that he requalified by earning ten times his weekly benefit amount.

Modify the Decision to read:

The August 23, 2011 (reference 2) decision is modified in favor of the Claimant. The claimant quit for non-work health reasons and is eligible from the date of his full release on September 27, 2011. Benefits are allowed effective that date provided the Claimant is otherwise eligible.

The Board remands this matter to the Iowa Workforce Development Center, Claims Section, for a calculation of the overpayment amount, if any, based on this decision.

John A. Peno

Monique F. Kuester