

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH A KOEHLER
Claimant

APPEAL NO: 11A-UI-14153-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STONE & WEBSTER
Employer

OC: 12/26/10
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 24, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits, or did the employer discharge him for reasons constituting work-connected misconduct?

When was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant is a union pipe fitter. He signs up for work at his union. The union then assigns him work. He has been working at various jobs for the employer for the last two years. In August 2011, the claimant started a job at for the employer on or about August 22, 2011. After work on August 31, the claimant felt ill. The evening of August 31, the claimant went to the emergency room.

The claimant did not have phone number to call the employer until Friday, September 2. On September 2, the claimant reported that he was ill and unable to work. The claimant was ill September 1 through 8 when had emergency surgery. The claimant's physician did not release him to return to work until the week of September 25, 2011.

After he was released to work, the claimant reopened his claim for benefits the week of September 25, 2011. He also signed up at his union hall to indicate he was again available for work. The claimant accepted the first job offered to him. He started a job at the employer's again on October 3.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The facts do not establish that the claimant quit or that the employer discharged him on August 31, 2011. Instead, the claimant was ill and restricted from working for medical reasons from September 1 through September 24, 2011. No employment separation occurred. This is supported by the fact the claimant began another job for the employer on October 3.

As of September 1, 2011, the claimant was ill and unable to work. The claimant did not file any claims for the weeks ending September 3 through September 24. If he had, he would not be eligible to receive benefits because he was unable to work. Iowa Code § 96.4(3).

Since no employment separation occurred, the claimant remains qualified to receive benefits as of September 1. The claimant is eligible to receive benefits as of September 25 because he was then able to and available for work.

(If the claimant had voluntarily quit his employment on August 31 for disqualifying reasons, he requalified to receive benefits as of October 29, 2011, and should have been paid benefits as of October 30, 2011.)

DECISION:

The representative's October 24, 2011 determination (reference 01) is reversed. The claimant remains qualified to receive as of September 1, 2011, because he did not quit and the employer did not discharge him. The claimant did not work September 1 through 24, because he was ill and unable to work. If the claimant had filed weekly claims for these weeks, he would not be eligible to receive benefits. The claimant was released to return to work by his physician the week of September 25. As of September 25, 2011, the claimant is eligible to receive benefits, provided he meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css