

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**MARK J WIEMERS**  
Claimant

**VAN MAANEN ELECTRIC INC**  
Employer

**APPEAL 22A-UI-17418-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/28/22  
Claimant: Appellant (2)**

Iowa Code § 96.5-1-d - Voluntary Quit for Medical Reasons  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Mark J. Wiemers, filed an appeal from the September 21, 2022 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was no longer authorized to work in the United States. The parties were properly notified of the hearing. A telephone hearing was held on October 19, 2022. The claimant participated. The employer, Van Maanen Electric Inc., participated through Human Resources Director Tammy DeJong. Exhibits 1, 2, 3, 4, A and B were received into the record.

**ISSUE:**

Did the claimant quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full time as a truck driver from June 19, 2019, until June 17, 2022, when he was discharged. The claimant's immediate supervisor was Supervisor Steve Heiser. The claimant worked Monday through Friday with a varying one to two hours regarding the start time and end time from 6:00 a.m. to 5:00 p.m. depending on the load assignment.

The employer has policies regarding how an employee can request and maintain a leave of absence. After the Covid19 pandemic, the employer relaxed these leave policies to encourage greater use. This liberal construction of the policy was in place immediately before the claimant's separation.

On March 23, 2022, the claimant asked Ms. DeJong if he could take a leave of absence due to an underlying cardiac condition that just started exhibiting symptoms. This symptom was not created or aggravated by the claimant's working conditions.

On April 11, 2022, the claimant returned to work momentarily because was unable to continue his shift. The claimant used paid time off to cover his shifts between March 23, 2022 and April 11, 2022. The claimant returned to his leave of absence.

On April 22, 2022, the claimant visited his physician. His physician restricted him from working until his next appointment on May 10, 2022. The employer provided a copy of this doctor's note. (Exhibit 1)

On May 10, 2022, the claimant had a follow-up appointment with his physician. The claimant's physician restricted him from working until he underwent further testing. The employer provided a copy of this doctor's note. (Exhibit 1)

On August 5, 2022, the claimant was released to return to work without restriction. The employer provided a copy of this doctor's note. (Exhibit 1)

On August 18, 2022, the claimant sent a text message to Ms. DeJong asking her if she knew anything about when he could return from his leave of absence. Ms. DeJong informed the claimant that she had not yet come up with a plan with management for him to return.

On August 29, 2022, the claimant sent a text message to Ms. DeJong asking her if she knew anything about when he could return from his leave of absence. Ms. DeJong did not respond. The claimant provided a copy of this text message. (Exhibit A)

On September 16, 2022, Ms. DeJong sent the claimant a text message informing him that his leave expired on June 17, 2022. The claimant provided a copy of this text message. (Exhibit A) Ms. DeJong testified the claimant abided by the rules of the leave of absence policy, but his leave merely expired. She added that the policy does not mandate rehire of employees who have been separated due to exhaustion of leave.

The following section of the findings of fact describes findings necessary to resolve the ability to and availability issue:

The claimant testified he had been looking for full-time work performed in Newton either as a truck driver or working in a grocery store or warehouse. The claimant had adequate transportation. He did not have doctor's restrictions. He was not ill for the majority of any of the weeks he filed. He does not have childcare concerns that would disrupt his ability or availability for work. The administrative record KCCO shows the claimant made the requisite work searches.

As of the date of the hearing, the claimant has been working for the past three weeks.

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

For the reasons that follow the administrative law judge concludes the employer terminated the claimant while he was on a leave of absence. He further finds the claimant was able and available for work effective August 28, 2022.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Services v. Jackson and Employment Appeal Board*, 810 N.W.2d 532 (Iowa Ct. App. 2012).

In this case, the employer terminated the claimant while he was on a leave of absence. The employer did not send any notification that the claimant's leave would be expiring. She did not inform him that he must return or he would be terminated. The employer has not met its burden to show the claimant's termination was caused by work-related misconduct. In fact, Ms. DeJong stated just the opposite.

Even if the parties disagree the claimant was terminated, he would still be entitled to benefits because he meets all of the elements of the non-work-related medical quit law. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to an injury under the advice of his physician. The employer consented to his leaving. The claimant provided the employer with certification that he has recovered. In addition, the claimant offered services to the employer. The employer refused to offer the claimant suitable work in response. As a result, even if the parties disagree with the administrative law judge that it should be analyzed as a quit, the claimant's separation is still non-disqualifying.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes the claimant was able and available effective August 28, 2022.

Iowa Code section 96.4(3)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. **A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required.** A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(1) provides:

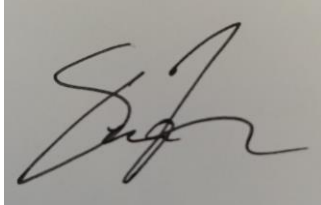
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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, the claimant is unavailable for work. The claimant was released to return to work without restrictions by his physician. The claimant is available for work because his physician stated he was able and available for work. The claimant is able and available for work. Benefits are granted, provided he is otherwise eligible.

**DECISION:**

The September 21, 2022 (reference 01) unemployment insurance decision is REVERSED. The claimant was discharged from employment due to non-disqualifying circumstances. The claimant was also able and available for work effective August 28, 2022. Benefits are granted, provided he is otherwise eligible.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

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Sean M. Nelson  
Administrative Law Judge II  
Iowa Department of Inspections & Appeals  
Administrative Hearings Division – UI Appeals Bureau

October 28, 2022  
Decision Dated and Mailed

smn/mh

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.