

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LOGAN R ALLEN**

Claimant

**APPEAL NO. 10A-UI-11279-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHENKER LOGISTICS INC**

Employer

**OC: 06/06/10**

**Claimant: Appellant (2)**

871 IAC 24.1(113) – Other Separations

Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 6, 2010, reference 01, decision that denied benefits based on an Agency conclusion that he had voluntarily quit on April 19, 2010 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 29, 2010. The claimant participated. The employer did not respond to the hearing notice and did not participate. Exhibit D-1 was received into evidence.

**ISSUES:**

Whether the claimant separated from the employment for a reason that makes him ineligible for unemployment insurance benefits.

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Logan Allen was employed by Schenker Logistics as a full-time warehouse worker from February 8, 2010 and last performed work for the employer on April 24, 2010. On April 26, 2010, Mr. Allen suffered a seizure and dislocated his right arm. Mr. Allen is right-handed. The treating physician advised Mr. Allen that he needed to be off work for six weeks. Mr. Allen provided the employer with the doctor's note that indicated he needed to be off work for six weeks. The employer advised that it would not authorize more than 30 days off and that if the claimant did not return by that time, he would be considered to have quit the employment. Mr. Allen was not released to work until July 24, 2010. The employer had already deemed him to have quit the employment. Mr. Allen has provided two doctors notes. One released him to return to work on July 24, 2010. The second released him to return to work on July 28, 2010, without restrictions.

## REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113), provides as follows:

All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The weight of the evidence in the record establishes that Mr. Allen did not in fact voluntarily quit the employment. At no time did Mr. Allen convey to the employer that he desired to separate from the employment. Instead, Mr. Allen could not continue to report to the employment after April 26, 2010 because his doctor(s) would not release him to do so. Mr. Allen could not fulfill the physical requirements of the employment. The separation falls within the category known as "other separations" and would not disqualify Mr. Allen for unemployment insurance benefits. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

The remaining question is whether the claimant has been able to work and available for work since he established the claimant for benefits that was effective June 6, 2010.

Iowa Code section 96.4-3 provides:

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

3. 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 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, 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".

871 IAC 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.

The weight of the evidence establishes that Mr. Allen was under the care of a physician and was not in fact able or available for work prior to Saturday, July 24, 2010. Benefits are denied for the period of June 6, 2010 through the benefit week ending July 24, 2010. Effective July 25, 2010, Mr. Allen was able to work and available for work. Effective July 25, 2010, Mr. Allen met the able and available requirements and is eligible for benefits, provided he is otherwise eligible.

**DECISION:**

The Agency representative's August 6, 2010, reference 01, decision is reversed. The claimant neither quit nor was discharged from the employment. The claimant's separation falls into the category of "other separations" and was due his inability to meet the physical requirements of the employment. The employer's account may be charged for benefits paid to the claimant.

The claimant was not in fact able or available for work prior to Saturday, July 24, 2010. Benefits are denied for the period of June 6, 2010 through the benefit week ending July 24, 2010. Effective July 25, 2010, the claimant was able to work and available for work. Effective July 25, 2010, the claimant met the able and available requirements and is eligible for benefits, provided he is otherwise eligible.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw