

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ZACJARY S OVEL
Claimant

APPEAL NO. 15A-UI-05386-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GO DADDY SOFTWARE INC
Employer

**OC: 04/12/15
Claimant: Respondent (2)**

871 IAC 24.23(10) – Period of Voluntary Unemployment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated April 28, 2015, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that the claimant was dismissed from work on April 7, 2015 under non-disqualifying conditions. After due notice was provided, a telephone hearing was held on June 15, 2015. Although duly notified, the claimant did not participate. The employer participated by Ms. Katherine Castillo.

ISSUE:

At issue is whether the claimant was discharged for misconduct and whether the claimant was eligible to receive unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Zacjary Ovel began employment with Go Daddy Software Inc. on November 30, 2014 and continues to be employed by the company at the time of hearing. Mr. Ovel is employed as a full-time internet sales consultant and is paid by the hour.

Mr. Ovel was not discharged by Go Daddy Software Inc. on April 7, 2015, the claimant requested to begin a medical leave of absence on April 7, 2015 and the leave of absence was to continue through April 23, 2015. The employer approved Mr. Ovel's request.

After completing the leave of absence that Mr. Ovel requested, he returned to work as agreed on Friday, April 24, 2015 and resumed his duties with the company.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged from his employment with Go Daddy Software, and if so, was it for misconduct? It does not. The next question before the administrative law judge is whether the claimant has voluntarily entered into a period of unemployment, and if so,

has the claimant been overpaid unemployment insurance benefits? He has not, as benefits were not claimed.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

The evidence in the record establishes that the claimant was not separated from his employment with Go Daddy Software, but that the claimant was off work because he requested a leave of absence. After being approved for a leave of absence, Mr. Ovel opened a claim for unemployment insurance benefits for the time he had requested to be off work.

An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates that the individual is able to work, available for work and is earnestly and actively seeking work. The claimant bears the burden of establishing that the claimant meets the above requirements. To establish the ableness requirement an individual must be physically and mentally able to work in some gainful employment.

A leave of absence negotiated with the consent of both parties, the employer and the employee, is deemed a period of voluntary unemployment for the employee claimant and the individual is considered ineligible for benefits for the period. See 871 IAC 24.22(2)(j).

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that the claimant has not been discharged from employment but has been voluntarily unemployed, on a leave of absence. Because he was on a leave of absence, he was not able and available for work since establishing a claim for benefits. Because he was on the leave of absence he was not eligible to receive unemployment insurance benefits from the effective date of his claim of April 12, 2015 through April 24, 2015, when his medical leave of absence came to an end and he returned to his regular employment with Go Daddy Software Inc. Mr. Ovel, it appears, opened his claim, but did not claim weekly benefits.

DECISION:

The representative's decision dated April 28, 2015, reference 01, is reversed. The claimant was on an approved leave of absence, and not eligible for unemployment benefits from April 12, 2015 through the week ending April 25, 2015. The claimant has not been overpaid benefits as claimant did not claim weekly benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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