

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WILLIAM D JONES
Claimant

CATCUS OPERATING LLC
Employer

APPEAL 21A-UI-16466-ED-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/18/21
Claimant: Appellant (2)

Iowa Code § 96.5(1) - 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 filed an appeal from the July 23, 2021 (reference 02) unemployment insurance decision that denied. The parties were properly notified of the hearing. A telephone hearing was held on September 17, 2021. The claimant, William Jones, participated personally. The employer, Cactus Operating LLC, did not participate. No exhibits were offered or admitted.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the claimant is able and available for work.
The issue is also whether the claimant was able to and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 19, 2018 as a full-time herds-person. Claimant took care of livestock, handled castration of livestock and other duties. Claimant's immediate supervisor was Trenton Kresey.

In April 2021, claimant underwent back surgery. Claimant's doctor did not release claimant to his job at Cactus Operating LLC. Claimant inquired about other positions within the company, but he was told that none were available to him. Because claimant's doctor did not release him to perform in his old position and there were no other positions available to him, claimant's employment was ended by the employer. The claimant intended to continue working. The claimant was told there was no work for him.

Claimant does not know what caused his back injury that required surgery.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged but not for misconduct.

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.

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 underwent back surgery and was not released to his job by his doctor. The employer consented to claimant leaving. The claimant has failed to provide the employer with certification that he has recovered. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible under this statute to receive benefits.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes he is not.

wa 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, he is considered to be unavailable for work. The claimant underwent back surgery in April 2021. He is considered to be unavailable for work after the surgery. The claimant is disqualified from receiving unemployment insurance benefits beginning April 2021, due to his unavailability for work.

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.

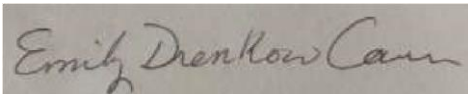
- (1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was not released to return to work.

The evidence establishes the claimant was unable to work due to a non-work-related medical condition. When an employee is unable to work and does not return to work due to a non-work-related medical condition, the separation is typically considered to be a voluntary quit without good cause attributable to the employer. Benefits are then denied until the claimant completely recovers and returns to offer his/her services to the employer. However, in the case herein, the employer took the first step and discharged the claimant for the same reasons. When the employer initiates a separation, the reasons must constitute work-connected misconduct before a claimant can be denied unemployment insurance benefits. The claimant's separation from employment was not due to any misconduct on his/her part nor did he quit his job. The claimant is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

DECISION:

The July 23, 2021, (reference 02) unemployment insurance decision denying benefits is reversed. The claimant was discharged, but not for disqualifying misconduct. Benefits are allowed.



Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

September 23, 2021
Decision Dated and Mailed

ed/mh