

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SCOTT J CLENDENEN**  
Claimant

**APPEAL NO. 09A-UI-15333-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**XL SPECIALIZED TRAILERS INC**  
Employer

**Original Claim: 03/29/09  
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving  
871 IAC 24.22(2)j – Leave of Absence

**STATEMENT OF THE CASE:**

Scott J. Clendenen (claimant) appealed a representative's October 5, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from XL Specialized Trailers, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 13, 2009. The claimant participated in the hearing. Rachel Moser appeared on the employer's behalf. One other witness, Pamela Steffen, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 8, 2006. He worked full-time as a welder in the employer's trailer manufacturing business. His last day of work was June 19, 2009. Beginning June 21, 2009 the claimant began a period of FMLA (Family Medical Leave) due to a non-work-related shoulder injury, for which he underwent surgery on July 24. The claimant's FMLA was scheduled to expire as of September 14, 2009. However, as of September 14 the claimant was still under a doctor's restriction of no work through September 18. As the claimant was unable to return to work at the end of the leave period, the employer informed the claimant that his employment was deemed ended. However, he was advised that if he should be released to return to regular job duties, he could reapply and possibly be rehired.

The claimant did receive a partial release from his doctor effective September 21, but the restrictions of no reaching, pushing, lifting, or pulling up to 40 pounds would not have allowed him to return to his regular job duties. He did receive a full release with no restrictions effective October 19, 2009, but he has not attempted to return to employment the employer, as he assumed the employer was not hiring.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2j). However, if at the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits; and, conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed, the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

Here, the claimant failed to return at the end of the leave of absence, and is therefore deemed to have voluntarily quit the employment. The claimant therefore has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Where the quit is for medical or health reasons, the quit is disqualifying at least until the claimant has recovered and seeks to return to work unless the medical or health issue is attributable to the employer. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b.

Where a claimant has been compelled to leave employment upon the advice of his physician due to a medical or health issue not shown to be caused or aggravated by the work environment, the claimant is not eligible to receive unemployment insurance benefits until or unless the claimant then recovers, is released to return to work by his physician, and in fact does attempt to return to work with the employer. 871 IAC 24.25(35). A “recovery” under Iowa Code § 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). While the claimant has now been released to return to full work duties, he has not sought to return to employment with the employer. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied until or unless he does attempt to return to work with the employer and no comparable work is provided to him.

**DECISION:**

The representative’s October 5, 2009 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of September 14, 2009, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible, or until he has sought to return to work with the employer but no comparable work is provided to him.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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