IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MICHAEL T WIEDERHOLD
11404 CHERRY VALLEY
FAIRFAX IA 52228

ACE OF LAPORT INC
118 AUDLEY ST
LAPORT IN 46350

MICHAEL T WEIDERHOLD
1141 – 1ST ST SW
CEDAR RAPIDS IA 52402

Appeal Number: 04A-UI-12774-RT
OC: 10-17-04 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.4-3 – Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Michael T. Wiederhold, filed a timely appeal from an unemployment insurance decision dated November 12, 2004, reference 03, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on December 21, 2004, with the claimant participating. Karla Tibbs, Secretary, and Curtis L. Hager, President, participated in the hearing for the employer, Ace of Laport, Inc. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time parts puller or dismantler for approximately six month, until he was separated on March 6, 2004. On that day the claimant alleges that he injured his back while working for the employer and attempting to upright an engine. The claimant informed his employer that he had to go home and he did so. The claimant was not told that he was fired or discharged, nor that he was not needed by the employer. Thereafter, the claimant did not return to work to perform his regular duties. On March 8, 2004, a medical group called the employer and asked for the employer's insurance coverage. The employer provided that information. The employer did not talk to the claimant at that time. On March 9, 2004, the claimant came in and informed the employer's witness, Curtis L. Hager, President, that his doctor had restricted him to light duty and that further, he was on a strong anti-pain medication. Mr. Hager informed the claimant that he had no light duty which would meet that restriction, especially in view of the medication that he was taking. The claimant then left and has never returned to the employer and offered to go back to work. The claimant was never told that he was fired or discharged. Mr. Hager did attempt to help the claimant see Mr. Hager's physician, but his physician was not taking new patients. The claimant did attempt to give to Mr. Hager certain medical bills, but he refused to take them and instructed the claimant to provide them to his insurance company. Mr. Hager did not refuse to accept any doctor's excuse from the claimant. The claimant's physician, at no time, told the claimant he had to quit. The claimant was also never told that he was fired or discharged. The claimant simply failed to return to work.

On or about October 17, 2004, the claimant was released by his physician to work, but with a 10 percent disability. The claimant was unable to state what jobs he believed he could do which would meet his restrictions. The claimant has placed no restrictions on his availability for work or the times or dates when he could or could not work; and the claimant testified that he is looking for work by making two or three in-person job contacts each week, but could not state what jobs he could do. The claimant never expressed any concerns to the employer about his working conditions or his injury, nor did he ever indicate or announce an intention to quit if any of his concerns were not addressed by the employer. The claimant requested no accommodations from the employer, except light duty when he was on medication, and the employer could not meet those restrictions. The claimant has never returned to the employer and offered to go back to work, even since being released by his physician. Although the claimant has received no unemployment insurance benefits since filing for such benefits effective October 17, 2004, Workforce Development records show that the claimant is overpaid unemployment insurance benefits in the amount of $34.00 from 2000.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.

2. Whether the claimant is ineligible to receive unemployment insurance benefits because he is and was, at relevant times, not able, available, and earnestly and actively seeking work. The claimant is ineligible to receive unemployment insurance benefits because he is not able to work.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

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.

871 IAC 24.26(6)a,b provide:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant left his employment voluntarily when he never returned to work. The claimant maintains that he was discharged but conceded that no one had ever told him that he was discharged or fired. The administrative law judge concludes that the claimant, in effect, voluntarily left his employment when he failed to return to work after the employer had no immediate light duty and the claimant was on strong pain medications and the employer had no job that the claimant could do while on the pain medication. The last day of the claimant's work was actually March 6, 2004 and, therefore, the administrative law judge concludes that the claimant effectively left his employment voluntarily on March 6, 2004. The claimant testified that he injured his back on March 6, 2004 while at work and the employer's witness, Curtis L. Hager, President, yelled at the claimant and told the claimant that he did not need him any more. Mr. Hager denied making any such statements and merely testified that the claimant said he was injured and had to go home and went home. The claimant's testimony is not

credible. The claimant testified before he realized that Mr. Hager was going to testify and Mr. Hager's testimony was straightforward and without emotion and the administrative law judge believes was more credible. Nevertheless, the administrative law judge notes that even the claimant testified that he had never been told that he was fired or discharged. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily on March 6, 2004. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The reason the claimant never returned to work and therefore voluntarily left his employment was because of an alleged job-related injury to his back. However, the claimant never presented competent evidence showing adequate health reasons to justify termination. Even the claimant testified that his physician did not say he had to quit, but merely restricted him to light duty and placed him on medication. In view of the claimant's job functions, dismantling cars, the administrative law judge believes that it was reasonable for the employer not to be able to meet the claimant's restrictions, especially in view of the medication the claimant was taking. The claimant did inform the employer that he had injured his back, but never said more about that directly to the employer and never informed the employer that he intended to quit unless the problem was corrected or reasonably accommodated. Other than the requested light duty, the claimant never requested any other accommodations from the employer. The claimant simply left the employer and never maintained contact, even after he was released by his physician to work, albeit with a 10 percent disability. Under these circumstances, the administrative law judge is constrained to conclude that the claimant has not demonstrated by a preponderance of the evidence that he is entitled to benefits as a result of an employment-related injury. The claimant has also never provided certification by a physician that he has recovered and returned to the employer and offered to perform services and no suitable comparable work was available. Therefore, there is not a preponderance of the evidence that the claimant is entitled to unemployment insurance benefits as a result of a non-employment-related injury. There is not a preponderance of the evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental, or that he was subjected to a substantial change in his contract of hire. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits.

The dispute between the parties seems to be a worker's compensation matter. However, that is irrelevant to the proceedings here. The only issue before the administrative law judge is the claimant's entitlement to unemployment insurance benefits. The administrative law judge is constrained to conclude here, from the evidence in the record, that the claimant is not entitled to such unemployment insurance benefits.

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 administrative law judge concludes that the claimant has the burden of proof to show that he is able, available, and earnestly and actively seeking work under Iowa Code section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that the claimant is either temporarily unemployed or partially unemployed under Iowa Code section 96.19(38)(b)(c) so as to excuse him from the requirements that he be able, available, and earnestly and actively seeking work. The administrative law judge also concludes that the claimant has not demonstrated by a preponderance of the evidence that he is able to work. The claimant testified that he has been released by his physician to work, but with a 10 percent disability. The claimant repeatedly and continually referred to a 10 percent disability. The claimant was unable to provide any specific jobs or functions that he could perform under this disability. It is true that an individual only has to be physically and mentally able to work in some gainful employment and not necessarily in his customary occupation, but it has to be one which is engaged in by others as a means of livelihood, and the claimant has provided no jobs which he felt he could do. The administrative law judge notes that various work opportunities present different physical requirements but the claimant has failed to state what jobs he could do. It is true that the claimant testified that he has been released by his physician to work, but with a 10 percent disability. The claimant offered no competent evidence of this but, in any event, the claimant has been unable to provide evidence as to what it was he could do. Under the record here, the administrative law judge is constrained to conclude that the claimant is not able for work. The claimant did testify that he has placed no restrictions on his availability for work and is earnestly and actively seeking work by making two or three in-person job contacts each week. However, again, the claimant did not say what job contacts he was making or what jobs he could do. In any event, the administrative law judge concludes that the claimant is available and earnestly and actively seeking work but is not able to work and, as a consequence, he is ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are

denied to the claimant until and unless he requalifies for such benefits and demonstrates that he is able to work and is continuing to be available for work and earnestly and actively seeking work.

DECISION:

The representative's decision dated November 12, 2004, reference 03, is affirmed. The claimant, Michael T. Wiederhold, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits and further demonstrates that he is able, available, and earnestly and actively seeking work, because the claimant left his employment voluntarily without good cause attributable to the employer and is not now able to work. Although the claimant has received no unemployment insurance benefits since separating from the employer herein, Workforce Development records indicate that he is overpaid unemployment insurance benefits in the amount of $34.00 for 2000.

b/tjc