

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDRE D WILLIAMS
Claimant

APPEAL NO. 10A-UI-00765-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA LAWN & HOME CARE INC
Employer

**Original Claim: 12/06/09
Claimant: Respondent (2/R)**

Section 96.4-3 – Able and Available
871 IAC 24.22(2)j – Leave of Absence
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Central Iowa Lawn & Home Care, Inc. (employer) appealed a representative's January 5, 2010 decision (reference 01) that concluded Andre D. Williams (claimant) was qualified to receive unemployment insurance benefits in connection with his employment with the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 23, 2010. The claimant participated in the hearing. Marcia Hofsommer appeared on the employer's behalf and presented testimony from two other witnesses, Leah Jones and Jason Hofsommer. During the hearing, Employer's Exhibit One was entered into evidence. 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.

ISSUES:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

Was there period of voluntary unemployment through a leave of absence?

Was there at least a temporary 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 26, 2008. He worked full-time as an assistant crew foreman on days working in the employer's janitorial service for a local industrial client. His last day of work was November 13, 2009.

On November 15 the claimant was hospitalized with seizures. The apparent cause of the seizures was lesions on the claimant's brain from a prior disease. There was no connection between the condition and the workplace. The claimant was released from the hospital on

November 20, but was advised by his doctor to stay off work at least for a few weeks. On December 2 his doctor gave him a restricted release to return to duty; he was to be restricted from “working near open flames, driving, or working in high places. He should be restricted from working in situations where loss of control of the body may result in harm to himself or others.”

The claimant’s regular job duties necessitated that he drive a floor scrubber for at least several hours every day. Less often, but yet with some frequency, he needed to be able to drive a forklift, change light bulbs using a scissor lift, and climb onto the roof to change filters. As a result, with the claimant’s restrictions as indicated on December 2, the claimant could not have done between 38 and 50 percent of his regular duties. Consequently, the employer advised the claimant that he needed to wait until he could return to work without these restrictions.

The claimant has not yet been released without restriction, and is uncertain when or if he ever will be released without those restrictions. The employer considers the claimant to still be on a leave of absence and that currently his job remains available to him if he recovers and can return to work.

The claimant established a claim for unemployment insurance benefits effective December 6, 2009. The claimant has received unemployment insurance benefits after establishing his claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

For each week for which a claimant seeks unemployment insurance benefits, he must be able and available for work. Iowa Code § 96.4-3. In general, an employee who is only temporarily separated from his employment due to being on a leave of absence is not “able and available” for work during the period of the leave, as it is treated as a period of voluntary unemployment. 871 IAC 24.22(2)j; 871 IAC 24.23(10)

The claimant’s current unemployment is due to his being on a leave of absence due to a non-work-related medical issue. As the condition causing his temporary unemployment was not related to the work environment, in order to be sufficiently well for the claimant to regain his eligibility status as being able and available for work, he must have a complete recovery to full work duties without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985); Iowa Code § 96.5-1-d. Unemployment insurance benefits are not intended to substitute for health or disability benefits. White v. Employment Appeal Board, 487 N.W.2d 342 (Iowa 1992). For the period the claimant is seeking unemployment insurance benefits, he was under sufficient work restrictions as would preclude him from returning to his regular work duties. The employer is not obligated to provide light duty work to the employer to accommodate restrictions due to a temporary condition that is not related to the workplace. Unemployment insurance benefits are not intended to substitute for health or disability benefits. White v. Employment Appeal Board, 487 N.W.2d 342 (Iowa 1992). The claimant is therefore not eligible to receive unemployment insurance benefits for that period.

The same result occurs if the situation is viewed as a voluntary quit because of a failure to return to work. 871 IAC 24.22(2)j. If the claimant is deemed to have voluntarily quit, he would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. 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 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). The claimant has not been released to return to full work duties. Accordingly, treated as a separation, the separation would be a voluntary quit without good cause attributable to the employer and benefits must be denied until or unless the claimant is fully released and does attempt to return to work with the employer, or until he earns ten times his weekly benefit amount in other covered employment.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's January 5, 2010 decision (reference 01) is reversed. The claimant was not able and available for work effective November 15, 2009, and the period of temporary separation was a period of voluntary unemployment not attributable to the employer. The claimant is not qualified to receive unemployment insurance benefits for the period from November 15, 2009 until such time as he has fully recovered and seeks to return to work with a full released, if at that time his job is no longer available to him, or until such time as he has requalified by earning at least ten times his weekly benefit amount in other covered employment. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw