

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REYNEA I OBRIEN
Claimant

APPEAL NO. 12A-UI-07420-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RJK INC
Employer

OC: 05/27/12
Claimant: Appellant (2-R)

Section 96.5-1(d) – Leaving Work on the Advice of a Physician for Medical Reasons/
After Certified Recovery, Attempted to Return
Section 96-5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated June 15, 2012, reference 01, which denied unemployment insurance benefits finding the claimant left employment on May 23, 2012 because of a non-work-related illness or injury. After due notice, a telephone hearing was held on July 16, 2012. Claimant participated. Participating on behalf of the claimant was Ms. Heather Irwin, Attorney/Legal Aid. The employer participated by Ms. Holly Jacobi and Mr. Mike Thomas. Exhibits One, Two, Three and Four were received into evidence.

ISSUES:

The issue is whether the claimant left employment due to a non-work-related illness or injury and after certified recovery, attempted to return but was told that no work was available, or whether the claimant was separated by the employer under disqualifying conditions.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Reynea I. O'Brien was employed by RJK, Inc., a temporary employment company who supplies employees to the GPC Company. Ms. O'Brien began her employment with RJK, Inc. on December 28, 2009 and was assigned to work at GPC, a client employer, as a long-term grain elevator production worker. Ms. O'Brien was paid by the hour. The claimant's contact person at RJK, Inc. was Tom Bourack.

On May 7 and May 8, 2012, Ms. O'Brien called in indicating that she could not work due to a knee condition. On May 9, 2012, Ms. O'Brien provided a doctor's slip limiting the claimant to light-duty work and eight hours per day. Because the claimant was limited to light duty which prohibited climbing ladders or stairs and limited the claimant to eight hours of work per day, she did not meet the essential job requirements of the temporary assignment at the GPC Company. On May 16, the claimant began to prepare filing medical leave paperwork. While the employer

and Ms. O'Brien waited for a final determination from the claimant's orthopedic surgeon, RJK, Inc, the temporary employer, made inquiries with Ms. O'Brien about whether she would accept office work that might be available to her and would not violate the restrictions imposed by her physician due to her non-work-related illness or injury; the employer did not offer Ms. O'Brien a light duty position. The claimant indicated she would not be willing to accept work of that nature as the pay was not near the almost \$20.00 per hour she was receiving as a grain elevator production worker at the GPC assignment.

On May 21, the orthopedic surgeon determined that the claimant's work limitations to eight hours per day with no lifting or climbing ladders would be a permanent restriction. Because the claimant's work restrictions precluded her from performing the job duties at the GPC assignment, she was no longer assigned to work at that location because of her non-work-related knee condition. No other jobs were available to the claimant at that time through the temporary employer although Ms. O'Brien's tact was to call everyday to force the company to give her work.

It is the claimant's belief that she was in effect "fully released" because her doctor had authorized her to return to work eight hours per day. The shifts at the GPC assignment run 12 hours per shift and the climbing of ladders and stairs is an essential job function for grain handling production workers.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that Ms. O'Brien voluntarily quit employment with RJK, Inc. It does not. The evidence in this record clearly reflects the claimant did not choose to voluntarily quit employment or indicate in any manner her desire to relinquish her position with the company. The evidence establishes that the claimant's separation from employment was initiated by RJK, Inc.

The question then becomes whether the evidence in the record establishes that Ms. O'Brien was discharged for misconduct in connection with the employment. It does not.

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.

871 IAC 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.

871 IAC 24.26(19) provides:

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:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The evidence in the record shows that Ms. O'Brien attempted to return to work with a light duty limitation that required her to work no more than eight hours per day and to avoid climbing ladders or the sides of grain cars. The employment that RJK, Inc. had available did not meet the permanent limitations that had been imposed by Ms. O'Brien's physician.

In the case of Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989) the Supreme Court of the State of Iowa considered the case of a pregnant certified nursing assistant who went to her employer with a physician's release that limited her to lifting no more than 25 pounds. Ms. Wills filed a claim for benefits because the employer would not let her return to work because of its policy of not providing light duty work. The Court ruled that Wills became unemployed involuntarily and was available for work within the meaning of the Employment Security Law because the restrictions did not preclude her from performing other jobs. The Court categorized the separation from employment as a termination by the employer for non disqualifying reasons.

The administrative law judge concludes that the factual pattern in this case is applicable to the reasoning adopted by the Supreme Court in the Wills case and, therefore, concludes that the claimant became unemployed involuntarily. She was, in effect, laid off from her employment for non disqualifying reasons. Based upon the evidence in the record, it appears that Ms. O'Brien is able to perform types of work that are generally available in the general labor market and, therefore, appears to meet the general requirements of being able for work. The administrative law judge, however, concludes there is an issue as to whether the claimant has unduly placed

unreasonable limitations on the hourly wage that she is willing to accept. The issue of the claimant's availability is Remanded to Iowa Workforce Development for investigation and the issuance of an appealable determination.

For the reasons stated herein, the administrative law judge concludes that the claimant did not voluntarily quit her employment due to a non-work-related illness or injury but that the claimant was separated under non disqualifying conditions. Benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated June 15, 2012, reference 01, is reversed. Claimant separated from the employer under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law. The issue of the claimant's availability is Remanded to UIS Division for investigation and the issuance of an appealable determination on the availability issue.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs