

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY L ROMICK SR
Claimant

APPEAL NO. 07A-UI-06427-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAPP BROS TRUCK STOPS INC
Employer

**OC: 06/03/07 R: 01
Claimant: Appellant (5)**

Section 96.5-1 - Quit

STATEMENT OF THE CASE:

Terry L. Romick, Sr. (claimant) appealed a representative's June 22, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Sapp Brothers Truck Stops, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 16, 2007. The claimant participated in the hearing. Scott Harrill, the service center manager, appeared on the employer's behalf. 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:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 12, 1996. The claimant worked as a full-time oil technician. The claimant's job duties required him to do bend, walk and sometimes lift more than 30 pounds.

In mid-March 2007, the claimant experienced a great deal of back pain. He never reported to the employer a work-related injury. The employer understood the claimant had back surgery before he began working for the employer. The claimant's last actual of work was March 16, 2007. The claimant planned to have back surgery in March, but had to delay the surgery for another medical reason until May 4, 2007. The claimant requested and received a medical leave of absence under FMLA.

On June 4, 2007, the claimant's physician released him to do light-duty work. The claimant contacted the employer and offered to do light-duty work. The employer did not have any

light-duty work for the claimant. When the claimant's medical leave expired on June 12, 2007, and he could not return to his job, his employment ended.

The claimant established a claim for unemployment insurance benefits during the week of June 3, 2007. The claimant can no longer work as an oil technician. The claimant cannot walk excessively; he can no longer do hard labor; drive a truck; or work as a construction worker. The claimant is looking for work as a cashier.

REASONING AND CONCLUSIONS OF LAW:

Three provisions of the unemployment insurance law disqualify claimants until they have been reemployed and have been paid wages for insured work equal to ten times their weekly benefit amount. An individual is subject to such a disqualification if the individual (1) is discharged for work-connected misconduct (Iowa Code § 96.5-2-a), (2) fails to accept suitable work without good cause (Iowa Code § 96.5-3), or (3) "has left work voluntarily without good cause attributable to the individual's employer." (Iowa Code § 96.5-1). The question is whether Iowa Code § 96.5-1 applies here since the evidence establishes the claimant was not discharged for misconduct.

Iowa Code § 96.5-1-d provides that an individual who is subject to disqualification under Iowa Code § 96.5-1 is not disqualified:

If the individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of 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.

The rule implementing Iowa Code § 96.5-1-d explains that "[r]ecovery is defined as the ability of the claimant to perform all of the duties of the previous employment." 871 IAC 24.26(6)a. The claimant has not met the requirements of Iowa Code § 96.5-1-d.

In White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992), the Iowa Supreme Court held that if the claimant's disability was not work-related, the agency properly imposed the disqualification. If, however, the cause of the claimant's disability was work related, the disqualification was improper." Id. at 345. Since the facts do not establish that the claimant's back surgery and ultimate disability was work related, the claimant is not qualified to receive unemployment insurance benefits. Even though the claimant was released to do light-duty work on June 4, he could not return to his job as an oil technician. For unemployment insurance purposes the claimant was able to work as of June 4 and is not eligible to receive benefits for the week ending June 9. Ultimately the claimant had to quit his employment as of June 12, 2007, when he could not return to the job he was hired to do even though his medical leave of absence had expired. This means the claimant is disqualified from receiving benefits as of June 10, 2007.

DECISION:

The representative's June 22, 2007 decision (reference 01) is modified, but the modification has no legal consequence. For unemployment insurance purposes, the claimant was not available for work as of June 3 and had to quit his employment as of June 12, 2007, when he was unable

to return to the job he had been hired to do when his medical leave of absence ended. The claimant is disqualified from receiving unemployment insurance benefits as June 3, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css