

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARION C PAYTON
Claimant

APPEAL NO. 10A-UI-11471-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACT INC
Employer

OC: 06/20/10
Claimant: Appellant (4)

871 IAC 24.1(113)a – Layoff
Section 96.5-1 – Voluntary Leaving
Section 96.4-3 – Able and Available
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Marion C. Payton (claimant) appealed a representative's August 9, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in connection with ACT, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 27, 2010. The claimant participated in the hearing. Deb Schriber 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.

ISSUES:

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?

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

FINDINGS OF FACT:

The claimant started working for the employer on November 3, 2008. He worked up to full-time as a contingent distribution clerk, working on a 4:00 p.m. to 12:00 a.m. shift up to five days per week, as needed, subject to periodic layoffs. His last day of work prior to August 25, 2010 was April 26, 2010. He was then returned to layoff status awaiting recall.

On May 2 the claimant was involved in a serious car accident; he suffered two slipped discs in his neck. On May 2 the claimant contacted his supervisor and informed him of the accident, indicating there would be a period of time during which he would not be available for work due to his injuries. As the claimant was not available for recall at about that time, the employer considered there to have been a separation due to a voluntary quit.

While the claimant was required by his doctor to wear a neck brace, the employer would not have allowed the claimant to return to work, even if work was available in May and June. The claimant was required to wear a neck brace for the first two months after his injury. He was permitted to remove the brace in July, and recontacted his supervisor about returning to work, but there was no work available with the employer at that time. In August, the claimant's doctor required him to return to wearing the brace, so he could not have worked even if work was available. On or about August 18, the claimant indicated to his supervisor that he could return to work without a brace the following week, and his supervisor agreed that he could be rehired; he was returned to work on August 25.

REASONING AND CONCLUSIONS OF LAW:

A separation is disqualifying if it is a voluntary quit without good cause attributable to the employer or if it is a discharge for work-connected misconduct.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The actual separation between the claimant and the employer occurred on April 26 and was a layoff by the employer due to the lack of work; the employer had no work it could provide to the claimant. The claimant's inability to return to work if he had been recalled thereafter is not a new separation, but then presents the question as to whether the claimant was able and available for work. As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

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 a non-work-related injury is not "able and available" for work during that period. 871 IAC 24.22(2); 871 IAC 24.23(10). The claimant was unable to return to work in May, June, and earlier in August, even if work had been available, due to the medical requirement that he wear a neck brace because of the non-work-related medical issue. As he could not return to work during those periods without the neck brace restriction, he was not able and available for work and therefore not eligible for unemployment insurance benefits. 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 month of July, the claimant was not under the work restriction that he wear the neck brace; for that month, the primary reason he was not returned to work with the employer was that there was a lack of work with the employer. He is therefore eligible to receive unemployment insurance benefits for that period; specifically, the weeks ending July 10, July 17, July 24, and July 31.

DECISION:

The representative's August 9, 2010 decision (reference 01) is modified in favor of the claimant. The claimant did not quit the employment but was laid off from the employer as of April 26, 2010 due to a lack of work. The claimant was not able and available for work effective May 2 through July 3, and from August 1 through August 24, due to a non-work-related injury; he is not eligible for unemployment insurance benefits for those periods. He was otherwise able and available for work for the period July 4 through July 31, but was off work because there was no work available for him with the employer.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw