

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEONARD J NAYLOR

Claimant

APPEAL NO: 13A-UI-08452-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC

Employer

OC: 06/30/13

Claimant: Appellant (4)

Section 96.5-2-a - Discharge

Section 96.4-3 – Able and Available

871 IAC 24.23 – Unable to Work/Illness or Injury

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 19, 2013, reference 02 that held he voluntarily quit without good cause on June 19, 2013, and benefits are denied. A telephone hearing was held on August 26, 2013. The claimant participated. Bill Detweiler, HR Manager, Will Cooper, Observer, and John Fiorelli, Representative, participated for the employer. Claimant Exhibits 1 – 6 were received as evidence.

ISSUES:

Whether claimant was discharged for misconduct in connection with employment.

Whether claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on February 4, 2009, and last worked for the employer as a part-time night stocker on April 25, 2013. Claimant suffered a job-related injury on July 23, 2012. He was on and off work for some period of time. The employer had provided claimant with a four-hour modified work duty shift during the later period of his employment.

On June 5, 2013 claimant's doctor released him to work with restrictions. The employer was willing to accommodate the restrictions but claimant wanted to remain off until June 12. The employer had claimant sign a declination of restricted duty form.

Claimant contacted the HR manager about not reporting to work at the store on June 12 because of pain and taking medication. Claimant believed he was approved to wait to return to work until he arranged a doctor appointment. Claimant was unable to arrange a doctor appointment.

The HR manager believed claimant had been scheduled to work in the store for June 17, 18 and 19. The employer considered claimant no-call/no-show to work when he did not return to work. The manager tried to contact claimant to make an appointment with claimant on June 25, 26 and 27th. On June 28 he told claimant he was going to have to cut ties with him (meaning employment termination).

Claimant remains under doctor restriction as of the date of this hearing and he is unable to work a full-time job.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes employer failed to establish claimant was discharged for misconduct on June 28, 2013.

The employer terminated claimant on June 28 because he failed to provide the employer information about his doctor appointment and return to work. The employer gave claimant permission not to return to work on June 5 and allow him to see his doctor about pain medication that was affecting him. The employer was juggling the issue of worker's compensation and employment status return to work.

The evidence does not establish claimant ever knew he was scheduled back to work on June 17, 18 and 19, and he denies. The employer witness admitted he did not instruct the claimant to report yet the employer offered in this hearing claimant was a no-call/no-show to work for those days. This conclusion is not supported by the employer witness continuing testimony it wanted to make an appointment with claimant to come in on June 25 – June 27, and when he failed to do so, he was terminated on June 28.

While it is acknowledged the claimant had been released by his doctor with restrictions to perform the work made available by the employer, the employer had agreed to postpone the return until claimant had an appointment with his doctor to review the pain medication. The employer did not warn claimant if he failed to make the appointment by a certain date and return to work, he would be considered a voluntary quit.

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 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The administrative law judge further concludes claimant does not meet the availability requirements of the law effective June 30, 2013.

He has not received an unrestricted release to return to work. The restrictions and claimant pain medication issues limit claimant's ability to work a part-time job.

DECISION:

The department decision dated July 19, 2013, reference 02, is modified. The claimant was not discharged for misconduct on June 28, 2013. Benefits are denied because he does not meet the availability requirements of the law.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs