IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 06A-UI-04629-SWT
OC: 03/26/06 R: 02
Claimant: Appellant (2-R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a - Discharge
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 25, 2006, reference 01, that concluded the claimant was unavailable for work because he was on a leave of absence. A telephone hearing was held on May 16, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. John Fatino participated in the hearing on behalf of the employer with witnesses, Doreen Coppinger and Judy Larson.

FINDINGS OF FACT:

The claimant worked full time for the employer as a mechanic from July 11, 2003, to March 27, 2006. The claimant periodically suffers from migraine headaches for which he has received medical treatment for about five years. The claimant also receives counseling for post-traumatic stress disorder.

The claimant was absent 50 days during 2005, primarily due to the migrane headaches. Prior to March 27, the claimant had been absent from work 26 days in 2006. The claimant properly notified the employer regarding his absences and provided medical excuses verifying his need to be off work. The claimant provided a medical statement dated March 4 that stated the claimant's wife had reported the claimant had been suffering from severe headaches every other week with nausea and vomiting.

Management personnel with the employer decided to place the claimant on a medical leave under the Family and Medical Leave Act (FMLA) because of his absenteeism, his history of treatment for problems with severe headaches, and the prospects that he would be undergoing further testing. The employer did this without any request by the claimant or any doctor's statement stating that he was unable to perform his job.

The claimant reported to work on March 27, 2006, but was sent home after two hours of work by the employee benefits manager and told to wait to receive something in the mail. On April 7, 2006, the claimant received a letter stating that he was requesting his medical leave including the days he had missed starting in January 2006 be covered under FMLA. This letter was inaccurate since the claimant had made no such request. The letter informed him that his FMLA leave would expire on May 11, 2006, and he was required to provide the employer with weekly updates every Thursday. The letter did not inform the claimant about what he needed to do in order to return to work before the expiration of his leave. The claimant understood that if he did not return to work on May 11, 2006, he would be terminated. The claimant called in every Thursday as required.

The claimant was not receiving any income and, therefore, applied for unemployment insurance benefits effective March 26, 2006. Since applying for unemployment insurance benefits, the claimant has been available to work and able to work. The Agency, however, did not require him to look for work because he was treated as an employee on a temporary layoff. He has not worked because he understood that the employer had placed him on leave until May 11, 2006, and he was not told what he needed to do to return to work.

The claimant had an appointment to see a specialist for an MRI on May 12 that had to be rescheduled until May 22, 2006, by the specialist. As a result, the employer has extended the claimant's leave of absence. The employer has never discharged the claimant and the claimant has not voluntarily quit employment.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). The claimant is not subject to disqualification per Iowa Code sections 96.5-1 and 96.5-2-a because he has never quit employment and had not been discharged. The claimant desired to continue to work, but the employer would not allow him to work and sent him home.

This is like Wills v. Employment Appeal Board, 447 N.W.2d 137 (Iowa 1989), in which the Supreme Court 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. Wills filed a claim for benefits after the employer did not let her return to work because of its policy of never providing light-duty work. The Supreme Court ruled that Wills became unemployed involuntarily and was able to work because the weight restriction did not preclude her from performing other jobs available in the labor market. This is even a stronger cause of an involuntary termination because the claimant was not allowed to return to work even though no doctor had imposed any work restrictions on him.

The next issue is whether the claimant was able to and available for work as required by Iowa Code section 96-4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work and actually there is no evidence that the claimant could not perform his job only that he was frequently absent from work. If the employer had followed the requirements of FMLA and required a doctor's certification that the claimant was unable to work due to a serious health condition, the situation might be different but the employer informally waived that requirement and determined the claimant could not work without such certification from a medical professional. Likewise, if the employer had clearly communicated to the claimant what he needed to do to return to work, the claimant's long period of unemployment might have been avoided.

The law provides that a claimant is considered unavailable for work and voluntarily unemployed if he requested and was granted a leave of absence. 871 IAC 24.23(10). In this case, however, the claimant did not request a leave of absence, it was imposed on him. He is not voluntarily unemployed.

The issue of whether the claimant should be required to register for and look for other employment considering the fact that he has been unemployed for over four weeks is remanded to the Agency for a determination under 871 IAC 24.2(1)c.

DECISION:

The unemployment insurance decision dated April 25, 2006, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/pjs