

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JERRY E PILGRIM**  
Claimant

**APPEAL NO: 14A-UI-08165-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**A TO Z DRYING INC**  
Employer

**OC: 07/13/14**  
**Claimant: Appellant (4)**

Iowa Code § 96.5(2)a – Discharge  
Iowa Code § 96.4(3) – Able to and Available for Work

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's July 29, 2014 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit this employment for reasons that do not qualify him to receive benefits. The claimant participated at the August 28 hearing. Kathy Mayer, an accountant, Katie Penfold, and Rose Zepeda appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant did not voluntarily quit this employment. Based on the reasons for his employment he is qualified to receive benefits, but he is not eligible to receive until the week of August 17, 2014, because of his availability for work.

**ISSUES:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for nondisqualifying reasons?

As of July 13, 2014, is the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant started working for the employer in January 2009. He worked as a full-time safety manager. The claimant went on an approved leave of absence on May 23, 2014. He exhausted his FMLA on July 8, 2014. The claimant's physician did not release the claimant to work without any work restrictions by July 8, 2014.

As of July 8, 2014, the claimant could not drive; he could not climb ladders or walk stairs. The claimant had braces on his legs so it was difficult for him to bend his knees, but he could sit. As of July 8, the claimant was capable of performing his administrative duties, which he believed amounted to about 50 percent of his job. When the claimant was not released to work without any restrictions by July 8, the employer ended his employment. If the claimant had been released to work without restrictions, his employment would have continued.

The claimant's physician did not release the claimant to drive until August 15, 2014. The claimant has been looking for office work, such as working as an administrative assistant, office employee; parts counter person, safety manager and a transportation security officer. The claimant also applied to train to become an insurance agent in training. He does not have an insurance license.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if he quits without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The evidence does not establish that the claimant voluntarily quit. Instead, the employer ended the claimant's employment on July 8, 2014, when he could not return to work without the employer making some accommodations. When an employee does not voluntarily quit but is terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer to work as Iowa Code § 96.5(1)d requires. *Prairie Ridge Addiction Treatment Servs. v. Jackson and Emp't Appeal Bd.*, 810 N.W.2d 532 (Iowa Ct. App. 2012).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer did not discharge the claimant for reasons constituting work-connected misconduct. Instead, the claimant's employment ended because he was unable to return to work without any medical restrictions on or before July 8, 2014. Based on the reasons for the claimant's employment separation, he is qualified to receive benefits.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4(3). A claimant is not required to be able to perform the job he had been doing, but to establish his availability for meaningful employment he cannot be looking for a tailor-made job. Since the claimant has work experience performing administrative or office work, he established that he is looking for meaningful employment. The fact the claimant's physician did not release him to drive until August 15 is a factor that must be considered to determine whether

the claimant is available for work. As of August 17, the claimant established that he was able to and available for work. Therefore, he is eligible to receive benefits.

**DECISION:**

The representative's July 29, 2014 determination (reference 01) is modified in the claimant's favor. The claimant did not voluntarily quit his employment. Instead, the employer discharged him when he was unable to return to work without work restrictions when his leave of absence ended on July 8, 2014. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. The employer's account may be charged for benefits paid to the claimant.

The claimant demonstrated he was able to and available for work as of August 17, 2014. He is eligible to receive benefits as of August 17, 2014.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css