IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

EDIN OBIC
Claimant

BEEF PRODUCTS INC
Employer

APPEAL NO. 10A-UI-05475-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/07/10
Claimant: Appellant (2)

871 IAC 24.1(113) – Medical Separation
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 7, 2010, reference 01, that concluded he was unable to work. A telephone hearing was held on May 25, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Jennifer Stubbs participated in the hearing on behalf of the employer with a witness, Rick Wood. Exhibits A and One were admitted into evidence at the hearing.

ISSUES:

Is the claimant qualified to receive unemployment benefits based on the reasons for his separation from work?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked full time as a maintenance mechanic for the employer from April 18, 2006, to March 3, 2010.

The claimant had sustained a work-related back injury in June 2009 due to lifting a piece of equipment. The injury was accepted by the employer as a work-related injury, and he was given light-duty work within the restrictions placed on him by the employer's doctor of no lifting of over 20 pounds and no excessive bending, standing, sitting, walking for about a month. He was later released for full-duty despite the claimant's complaints of back pain.

In February 2009, the claimant continued to have back pain. He requested and received an MRI. The company doctor stated the MRI showed no injuries and released him to full duty. The radiologist, however, stated in his report that the claimant had a disc herniation and compression of a nerve root. The claimant's doctor advised the claimant that the MRI showed a herniated disc. Despite this, the claimant continued to work in his regular job.

In early March 2010, the claimant's painful back condition worsened. He notified his supervisor who in turn notified the safety director. The safety director instructed the supervisor to send the

claimant home to be evaluated by his personal doctor. The claimant saw his doctor who attributed the back pain to the herniated disc evidenced on the MRI. The claimant returned to the employer with this information, and the claimant was then referred back to the employer's doctor. The employer's doctor decided that the injury was not the same as the work-related injury and determined it was not work-related.

The claimant was released to work with restrictions placed on him by his doctor of no lifting, pulling, pushing, or carrying over 30 pounds with standing, sitting, or walking limited to 1 to 4 hours per day and no twisting.

The employer would not provide work accommodating the claimant's restrictions under its policy of not accommodating injuries that are not related to work. The employer placed the claimant on leave under the Family and Medical Leave Act (FMLA) for a maximum of 12 weeks, which ends on May 28, 2010. He had to sign documents regarding the leave, but he did not request the leave. The employer informed the claimant that he could not return to work until he his released to perform his regular job.

The claimant has not voluntarily quit employment and has not been discharged by the employer. He is ready and willing to return to work when the employer allows him to work.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 7, 2010. He has a 30-50 pound weight restriction and is restricted to standing, sitting, and walking occasionally during the day. There are jobs the claimant can perform despite his work restrictions; for example, he could work as store clerk and in tire shop and has done this type of work before. He has a high school diploma.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant voluntarily quit employment without good cause attributable to the employer or was discharged for work-connected misconduct. 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.

There is no evidence the claimant quit his job or was discharged for work-connected misconduct. I recognize that Iowa Code section 96.5-1 provides a disqualification for individuals who voluntarily quit employment and Iowa Code section 96.5-1-d operates as an exception to that rule for individuals who voluntarily leave employment due to illness or injury under certain circumstances. To voluntarily quit, however, 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). In this case, the claimant never quit employment or intended to leave his job. He desired to continue to work but the employer would not allow him to work with restrictions. He reported to work his last day of work but was sent home by the employer.

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 CNA 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. The same reasoning applies to this case.

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 full-time gainful work, just not work that requires lifting of over 30-50 pounds and prolonged sitting, standing, or walking. There is unquestionably work available in the labor market meeting such restrictions, and the claimant has shown he was available for that work.

Finally, the rules provide that a claimant is considered unavailable for work if the claimant requested and was granted a leave of absence, since the period is deemed a period of voluntary unemployment. 871 IAC 23(10). In this case, however, the claimant did not request the leave of absence so that he cannot be considered to have been voluntarily unemployed.

DECISION:

The unemployment insurance decision dated April 7, 2010, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs