

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SMELING M MICHEL CASTILLO**  
Claimant

**APPEAL NO. 16A-UI-10872-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BROCK SERVICES LLC**  
Employer

**OC: 08/28/16**  
**Claimant: Respondent (4)**

Iowa Code Section 96.5(1)(d) – Return to Work Upon Recovery from Illness

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 9, 2016, reference 01, decision that allowed benefits to the claimant, provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on August 24, 2016 or no disqualifying reason. After due notice was issued, a hearing was held on October 20, 2016. Saul Castor represented the employer and presented additional testimony through Anthony Guidry. Claimant Smeling Michel Castillo did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit One into evidence. The administrative law judge took official notice of the materials submitted for and generated in connection with the September 26, 2016 fact-finding interview.

**ISSUES:**

Whether claimant Smeling Michel Castillo separated from the employment for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Smeling Michel Castillo was employed by Brock Services, L.L.C. as a full-time Painter from October 2015 and last performed work for the employer on July 22, 2016. Mr. Michel Castillo worked at a jobsite in Sergeant Bluff, Iowa. It is unclear who Mr. Michel Castillo's immediate supervisor was. Saul Castor, Site Safety Manager, believed Anthony Guidry, Project Estimator, was Mr. Michel Castillo's immediate supervisor. Mr. Guidry asserts he was not Mr. Michel Castillo's supervisor and does not know who was. At the time Mr. Michel Castillo worked his last day for the employer, the employer was facing a project completion deadline with a liquidated damages penalty. The employer had employees, including Mr. Michel Castillo, working 12-hour days with 13 days on followed by one day off. The employer planned to begin laying employees off in the near future. Based on this combination of factors, the employer was severely restricting time off and was telling employees, with rare exception, that if they took time

off, they would have to reapply later. Mr. Michel Castillo asked the employer for a three-week medical leave of absence after suffering an apparent heart attack. The employer told Mr. Michel Castillo that he would need a full medical release and would have to reapply for employment. Mr. Michel Castillo then went off work.

On August 7, 2016, the employer documented a voluntary separation from the employment, based on the request for the three-week medical leave of absence.

Mr. Michel Castillo is from a Latin American country and traveled to that country during the period of his absence from the workplace. Mr. Michel Castillo then returned to the job site to offer his services. A foreman directed Mr. Michel Castillo to Saul Castor, Site Safety Manager. Mr. Castor reaffirmed that Mr. Michel Castillo had to reapply before he could be considered for further employment and that he had to provide a medical release. On August 23, 2016, Mr. Michel Castillo obtained a written medical release from a Nurse Practitioner at Siouxland Community Health Center. The release indicated that Mr. Michel Castillo had been by Shannon Stewart, A.R.N.P., on August 23, 2016 and was released to return to work without restrictions effective August 24, 2016. Mr. Michel Castillo contacted Mr. Castor to advise that he had the medical release from the nurse practitioner. Mr. Castor told Mr. Michel Castillo that the release from the local nurse practitioner was insufficient and that Mr. Michel Castillo would have to provide a release from the treating physician in his home country. That was the end of the contact between the parties.

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

The employer bears the burden of proving that a claimant is disqualified for unemployment insurance benefits. See Iowa Code section 96.6(2). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976). The quality of evidence presented at the hearing was seriously lacking. The claimant did not participate. The employer's witnesses were unable to provide material facts and provided contradictory testimony. Mr. Castor testified with certainty regarding conversation and contact that Mr. Guidry purportedly had with the claimant. However, Mr. Guidry denied he was the claimant's supervisor, could not remember who the claimant was, and did not recall any discussion with the claimant about his need for time away.

The weight of the evidence in the record establishes that the claimant left the employment to address a serious medical issue. The claimant then returned to offer his services. The employer told the claimant he would have to re-apply and would have to present a medical release. The claimant went and got a medical release, contacted the employer to indicate he had the requested medical release, but the employer told him the release he had obtained was not good enough. The employer imposed a further hurdle by insisting that the claimant contact a physician in another country and produce a medical release from that physician.

This case most closely resembles a voluntary quit for a non-work related medical issue.

Iowa Code § 96.5-1-d provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for

absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The Iowa Employment Security Law is to be construed "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997).

The weight of the evidence indicates that Mr. Michel Castillo left because of serious illness, left upon the advice of a licensing and practicing physician, recovered, as certified by a medical professional, and the employer did not provide additional employment. Based on these circumstances, the claimant's separation from the employer was for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

**DECISION:**

The September 9, 2016, reference 01, is modified as follows. The employer failed to reemploy the claimant after the claimant separated from the employment due to serious illness, recovered, obtained certification that he had recovered, and returned to the employer to offer his services. The claimant's separation from the employer was for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs