

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWRENCE E TAYLOR JR
Claimant

APPEAL NO. 08A-UI-07665-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**OC: 04/20/08 R: 03
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 21, 2008, reference 05, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on September 8, 2008. Claimant participated. Employer participated through Sarah Fielder. The parties waived the fact-finding interview and hearing notice on the issue of the separation.

ISSUE:

The issue is whether claimant is able to and available for work effective June 29, 2008 and if he quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time laborer assigned at Goodwill Industries from April 21, 2008 until August 20, 2008 when he quit. He was warned in June about calling in to report absences and worked on June 26. He called on July 1 and spoke with Kris to tell her he would be gone for a couple of weeks because he had been assaulted while in Chicago for his daughter's wedding. He returned on July 16, 2008 and worked through August 15, 2008. He had no-call/no-show absences on August 13 and 14 but worked on August 15. He was a no-call/no-show on August 18, 19, and 20, 2008 so employer considered him to have voluntarily quit the employment pursuant to its policy provided to claimant upon his hire and reviewed in June. Claimant does not have work restrictions other than speech therapy as a result of the injuries sustained in the assault. He is eligible to apply for rehire.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

Iowa Code § 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 24.22(2)j(1)(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant requested and was given a leave of absence to undergo treatment for non-work-related injuries. Accordingly, benefits are denied.

As to the issue of the separation, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 96.5-1 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.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer on August 20, 2008. Benefits are withheld.

DECISION:

The August 21, 2008, reference 05, decision is affirmed. The claimant is not able to work and available for work effective June 29, 2008. He voluntarily left employment without good cause attributable to the employer on August 20, 2008. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css