

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARION COOPER

Claimant

APPEAL NO. 12A-UI-06946-WT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EARTHGRAINS BAKING COMPANIES

Employer

OC: 04/01/12

Claimant: Appellant (2)

Section 96.5-5(b) – Temporary Disability in Workers’ Compensation

Section 871 IAC 24.23(10) – Leave of Absence

Section 96.4-3 – Able and Available

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed a combined appeal from three different fact-finding decisions involving two different employers.

1. 5/2/12 Reference 04 denied benefits on the basis of claimant’s receipt of temporary disability payments through workers’ compensation. The employer on this file is Earthgrains Baking Companies and this corresponds with Appeal No. 12A-UI-06944-WT.
2. 5/8/12 Reference 05 denied benefits on the basis that the claimant was on an agreed leave of absence and was considered not able and available for work. Sara Lee Corp. is the employer on this file and it corresponds with Appeal No. 12A-UI-06945-WT.
3. 5/8/12 Reference 06 denied benefits on the basis that claimant was not able and available for work. Again, Sara Lee Corp. is the employer and it corresponds with Appeal No. 12A-UI-06946-WT.

The claimant participated in this hearing through attorney Dennis McElwain. Neither employer participated. Exhibits 1 through 8 were offered and received.

ISSUE:

Whether the claimant is entitled to unemployment insurance benefits.

FINDINGS OF FACT:

The claimant began working for Earthgrains Baking Companies in March 1997. Earthgrains was acquired by Sara Lee Corp. The claimant was a sales representative. On or about June 12, 2010, the claimant suffered a very serious injury to his right shoulder while at work. He ended up having two surgeries and was off work continuously for an extended period of time. He was finally placed at maximum medical improvement by his treating doctor on May 21, 2012.

This is the date he ceased receiving temporary disability benefits and began receiving permanent partial disability payments.

The employer never allowed him to return to work. He was effectively laid off as a result of his injury. On April 30, 2012, he was terminated because of his disability. He is not, however, totally disabled at this time. He is capable of work within his medical restrictions. These restrictions, while significant, do not preclude him from working in light to medium work that does not require a great deal of overhead work. The claimant is qualified for light to medium employment, including assistant manager at a gas station and retail sales.

The claimant filed for benefits on or about the week of April 1, 2012. He filed preemptively in order to make sure that there would be no issue with the substitution of quarters, which is allowed when an employee is off work for an extended period of time due to a work injury. As a result of his filing, he received several different denials referenced in the Statement of the Case. Claimant did not receive these denials. On June 5, 2012, claimant went into his local IowaWORKS office in Sioux City, Iowa, to ask for the substitution of quarters and discovered that his claim was locked on the basis of the decisions set forth above. He appealed through his attorney the following day.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

There is no timeliness issue here in regard to any of the files. The claimant did not receive the denials until June 5, 2012. Consequently, he did not have a reasonable opportunity to contest the denials until then, which he did immediately.

With regard to the substantive issues, it should be noted that none of these matters were truly ripe for appeal. The claimant went into his IowaWORKS office on June 5, 2012. He was informed of the denials at that time.

Appeal No. 12A-UI-06944-WT. The appropriate issue in this appeal is whether the claimant was receiving temporary disability benefits through workers' compensation. While he was receiving such benefits at the time the fact-finding decision (5/2/12 Reference 04) was entered, he was no longer receiving such benefits at the time of hearing. Claimant ceased receiving temporary disability benefits on May 21, 2012. Therefore, he is qualified to receive benefits as of May 22, 2012.

Appeal No. 12A-UI-06945-WT. The appropriate issue in this appeal is whether the claimant was on a voluntary leave of absence. This decision (5/8/12 Reference 05) is reversed. Claimant was terminated on April 30, 2012. He was no longer on a voluntary leave of absence after April 30, 2012. This disqualification is reversed as of that date.

Appeal No. 12A-UI-06946-WT. The appropriate issue in this file is whether the claimant is able and available for work. This decision (5/8/12 Reference 06) is reversed. The claimant became able and available for work when he was released by his treating doctor. It is not entirely clear from the record the exact date he was first "able and available" to work as defined by Iowa law, but it was certainly no later than the date he received his permanent restrictions in March 2012. The claimant was clearly capable of meaningful, gainful employment within the limitations described in those restrictions. Consequently, this disqualification is reversed as of March 27, 2012.

DECISION:

The May 2, 2012, reference 04 decision; the May 8, 2012, reference 05 decision; and the May 8, 2012, reference 06 decision are all reversed and remanded to the Unemployment Insurance Service Center. The claimant is eligible for benefits, so long as he meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/kjw