

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

GREGORY D LATAS
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RUTLAND IA 50582

SPHERION ATLANTIC WORKFORCE
% TALX UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-06662-CT
OC: 11/09/03 R: 01
Claimant: Appellant (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1)d – Separation Due to Illness/Injury

STATEMENT OF THE CASE:

Gregory Latas filed an appeal from a representative's decision dated June 14, 2004, reference 06, which denied benefits based on his May 7, 2004 separation from Spherion Atlantic Workforce (Spherion). After due notice was issued, a hearing was held by telephone on July 13, 2004. Mr. Latas participated personally. The employer responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Latas began working through Spherion, a temporary

placement service, on December 8, 2003 and was assigned to work full time at Hotsy Corporation. He was still on the assignment when he was involved in a car accident on May 8, 2004. He sustained fractures to bones in his back and neck. His girlfriend notified Spherion of his hospitalization. He spoke to the employer on May 17 after his release from the hospital. Mr. Latas had been advised by his doctor that he was not to engage in work activity until his follow-up doctor's visit on May 28.

On May 28, Mr. Latas' doctor released him to return to work but indicated he was to perform no bending or lifting of items weighing more than 15 pounds. He promptly notified Spherion of his release and restrictions. Because his job at Hotsy Corporation required more lifting than allowed by his doctor, Mr. Latas was not returned to the assignment at that point. He was told that he still had a job but could not return until his restrictions allowed him to perform his job. Mr. Latas next saw the doctor on June 23 and was released to return to work with a 50-pound lifting restriction. He gave notice of his release to Spherion the same day. Because his restriction would not prevent him from performing his usual job, Mr. Latas returned to Hotsy Corporation on June 28, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Latas was separated from employment for any disqualifying reason. When he filed his additional claim for job insurance benefits effective May 16, 2004, he was temporarily separated from Spherion because of injuries sustained in a car accident. Pursuant to Iowa Code Section 96.5(1)d, he would not be entitled to job insurance benefits until such time as he recovered from his injuries. Mr. Latas could not perform any work activity until released for light-duty on May 28. However, where an individual is off work due to an injury which is not work-related, he must be completely recovered when he re-offers his services to the employer. See Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). Because Mr. Latas was not released to perform his normal job on May 28, he was not entitled to job insurance benefits. He had recovered to the extent that he was again able to perform his job at Hotsy Corporation effective June 23. However, he was not returned to work until the following week. Because Mr. Latas was physically able to perform his normal job for the major portion of the week of June 20 through 26, he is entitled to benefits for that week only.

DECISION:

The representative's decision dated June 14, 2004, reference 06, is hereby modified. Mr. Latas was temporarily separated from employment on May 7, 2004 but did not satisfy the requirements of Iowa Code Section 96.5(1)d until June 23, 2004. Benefits are allowed effective June 20, 2004, provided Mr. Latas satisfies all other conditions of eligibility. Benefits are denied effective June 27, 2004 as Mr. Latas returned to full-time employment that week.

cfc/s