

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIS SCHROEDER
Claimant

APPEAL NO: 11A-UCX-00035-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EAST IOWA MACHINE COMPANY INC
Employer

**OC: 05/15/11
Claimant: Appellant (1)**

Iowa Code § 96.4-3 - Able and Available for Work
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Willis Schroeder (claimant) appealed an unemployment insurance decision dated September 6, 2011, reference 04, which held that he was not eligible for unemployment insurance benefits because he was not medically able to perform work for East Iowa Machine Company, Inc. (EIMCO) (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 30, 2011. The claimant participated in the hearing with Attorney Todd Locher. The employer participated through Kristie McCarthy, Human Resources Director and Manager Rick Hoffman. Employer's Exhibits One through Three and Department Exhibit One were admitted into evidence. The parties waived notice so that the separation issue could be addressed in today's hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's appeal is timely and, if so, whether the claimant qualifies for unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last known address of record on September 6, 2011. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 16, 2011. The appeal was not filed until November 2, 2011, which is after the date noticed on the disqualification decision. The claimant filed an appeal to the overpayment decision dated October 28, 2011 and this decision was included.

The claimant was hired as a full-time CNC mill operator on January 19, 2010 and worked through March 21, 2011, which was his last full day of work. He was taken off work due to a non-work-related back injury. The claimant was placed on leave under FMLA on March 23,

2011. He voluntarily quit on June 7, 2011 stating that he did not feel he would be able to work any time soon and he wanted to go to school. The claimant's medical problems are ongoing and he has not yet been released to return to work. He is working with Dr. Chesney of the Neurology Department of Veterans Affairs.

The claimant does not have any marketable skills or training performing other types of jobs aside from working in a foundry and as a crane operator. He worked in the United States Army from January 2006 through January 2010 as an infantry machine gunner.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides in pertinent part:

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. . . . 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.

The claimant did not receive the decision within the ten-day time period allowed for the appeal. He did file an appeal immediately upon receiving information he had been overpaid as a result of a disqualification decision. Therefore, the appeal shall be accepted as timely.

The substantive issue to be determined in this case is whether the claimant meets the availability requirements of the law and whether he voluntarily quit his employment with good cause attributable to the employer. The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979).

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 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant was off work due to a non-work-related medical injury as of March 23, 2011. He has not been released to return to work without restrictions and is unable to perform any other types of work. Consequently, he does not qualify for unemployment insurance benefits as of May 21, 2011, because he was not able to work.

Subsequently, the claimant voluntarily quit his employment on June 7, 2011, when he was out on Family Medical Leave. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1. An individual who leaves employment due to illness or injury must return to the employer and re-offer his services once he is released by his doctor to resume work activity. Iowa Code § 96.5(1)d. Where the illness or injury that necessitated the absence is not work-related, the individual must have a complete release when he re-offers his services. See *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa 1985). The claimant has not been released to return to full work duties. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The claimant's appeal is timely. The unemployment insurance decision dated September 6, 2011, reference 04, is affirmed. The claimant does not meet the availability requirements of the law as of May 15, 2011 and benefits are denied. Since he subsequently quit his employment without good cause, benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw