

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER A WILLIAMS
Claimant

APPEAL NO: 14A-UI-06626-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 06/01/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed a representative's June 19, 2014 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit this employment for reasons that do not qualify him to receive benefits. The claimant participated at the July 17 hearing with his attorney, Christopher Spaulding. Brent Knutson, the human resource business partner, appeared on the employer's behalf. During the hearing Claimant Exhibits A through C were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that do not qualify him or did the employer discharge him for work work-connected misconduct?

Is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working for the employer in May 2011 as a full time in-bound warehouse employee. The claimant had shoulder surgery. When his doctor released him to light-duty work, the claimant worked a light-duty job for 12 weeks. He then worked two weeks trying to do the work he had been doing before his surgery. After two weeks of more difficult work, the claimant was unable to perform the job as an in-bound warehouse employee. When he was unable to do this work, the employer would not allow him to work. The claimant's last day was in February 2014.

On April 1, 2014, the claimant's physician gave him a medical assessment and gave him a permanent restriction that he could not lift more than 30 pounds and could do no away from the body lifting of more than 15 pounds. (Claimant Exhibit C.). This restriction prevented the

claimant from working as an in-bound warehouse employee. The in-bound warehouse job required the claimant to lift 60 pounds. The claimant asked the employer about working in another department and understood the employer did not have another job for him.

In a March 10, 2014 email, the employer's attorney informed the claimant's attorney that the employer would start paying the claimant workers' compensation benefits, PPD. (Claimant Exhibit B.) The employer sent the claimant a May 12 letter informing him that he needed to make a request for a leave of absence or the employer would consider him on an unapproved leave of absence. The claimant next received a May 29 letter informing him the employer would administratively end his employment in five days if he did not contact the employer or another entity. The claimant assumed the employer ended his employment on June 5, but the employer did remove the claimant's name as an employee. As of July 17, the employer considers the claimant on an unapproved leave of absence.

The claimant established a claim for benefits during the week of June 1, 2014. He has filed weekly claims. He has been looking for work that does not require him to lift more than 30 pounds. The claimant's work experience allows him to work in a number of jobs that do not require him to look for tailor-made jobs.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The evidence does not establish that the claimant voluntarily quit this employment. The claimant tried to return to work after a surgery, but when he was unable to do anything more than light duty work, the employer removed him from any doing work. The claimant asked if he could work in another department, but understood the employer did not have any jobs for him. The claimant has not worked since February 2014 because he is unable to return to his job as an in-bound warehouse employee. The claimant's permanent weight restriction does not allow him to work as an in-bound warehouse employee.

When the claimant could not physically perform the work as an in-bound warehouse employee, the employer effectively put him on an unapproved leave of absence and did not ask him to do any other work. The employer even told the claimant in a May 29 letter that if he did not contact the employer by a certain date, the employer would administratively end his employment. As a result of this letter, the claimant established a claim for benefits during the week of June 1.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Since the claimant tried to return to work in a different department and was told the employer did not have any work for him, the employer initiated the claimant's employment separation. The employer would not schedule the claimant to work because he was unable to do the job. The claimant did not commit work-connected misconduct. As of June 1, when the claimant established a claim for benefits, he is qualified to receive benefits.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4(3). A claimant is not required to be able to perform his most recent job. He is only required to establish that he has experience in jobs and that he is not limiting his work search to a tailor-made job. Based on the claimant's work experience, he established that he is able to and available for work.

DECISION:

The representative's June 19, 2014, determination (reference 02) is reversed. The claimant did not voluntarily quit his employment. Instead his employment ended because his work restrictions prevented him from being able to do the job as an in-bound warehouse employee. The evidence establishes the employer had business reasons for not scheduling the claimant, but the claimant did not commit work-connected misconduct. As of June 1, 2014, the claimant is qualified to receive benefits. As of June 1, the claimant established he is looking for work in which he has experience in and is capable of performing even with his 30-pound weight restrictions. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs