IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHAEL I CHANDLER
Claimant

SCHENKER LOGISTICS INC
Employer

APPEAL NO: 10O-UI-04888-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/25/09
Claimant: Appellant (4)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Michael I. Chandler (claimant) appealed a representative's November 30, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Schenker Logistics, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 20, 2010. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer through a temporary employment firm, the claimant started working directly for the employer on February 2, 2007. He worked full time as weekend dock coordinator on an overnight shift on Friday, Saturday, Sunday, and Monday. His last day actually worked was July 20, 2009.

On July 21 the claimant suffered serious foot and leg injuries in an off-work accident. As a result, he went on a medical leave of absence from his employment. His leave expired October 26, 2009. At the point the claimant's leave expired, the cast was off his leg and the pins were out of his leg, but he still had significant restrictions. Specifically, he was not permitted to wear a steel toed boot, required 100 percent of the time for his job, he could not drive a forklift, required about 50 percent of the time for his job, he could not do extended standing, required about 40 percent of the time for his job, and he could not do heavy lifting, approximately 30 pounds, which was only occasionally required for his job. As a result, the claimant could not return to his job with the employer at the conclusion of his leave of absence.

The employer has left the option open to the claimant to seek reemployment at such time as his restrictions are fully removed. As of the date of the hearing, while the latter two restrictions have been resolved, the claimant is still prohibited by his restrictions from wearing a steel toed boot and from driving a forklift. Therefore, he has not yet sought to return to employment with the employer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits, and conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

Here, the claimant failed to be able to return to his job at the end of the leave of absence because of not being fully recovered from a non-work injury, and he is therefore deemed to have voluntarily quit the employment. The claimant therefore has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Where a claimant has been compelled to leave employment due to a medical or health issue not caused or aggravated by the work, the claimant is not eligible to receive unemployment insurance benefits until or unless the claimant then recovers, is released to return to his regular work duties by his physician, and in fact does attempt to return to work with the employer. 871 IAC 24.25(35). A "recovery" under Iowa Code § 96.5-1-d means a complete recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). Unemployment insurance benefits are not intended to substitute for health or disability benefits. White v. Employment Appeal Board, 487 N.W.2d 342 (Iowa 1992). The claimant has not yet been released to return to his full work duties. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied until or unless he is fully released and does attempt to return to work with the employer; if the employer then does not return him to employment, the separation would then become attributable to the employer.

DECISION:

The representative's November 30, 2009 decision (reference 01) is modified in favor of the claimant. The claimant voluntarily left his employment without good cause attributable to the employer because of a non-work-related injury; he has not yet fully recovered and has not yet offered to return to work after a full recovery. As of October 26, 2009, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten

times his weekly benefit amount, or until he has been released as fully recovered and offered to return to work with the employer but no work was then available, provided he is then otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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