

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN S LAKE
Claimant

APPEAL NO. 07A-UI-03499-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY CARTON COMPANY
Employer

**OC: 03/11/07 R: 04
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct
Section 96.5-1-d – Attempt to Return to Employment With Medical Certification
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated March 3, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 19, 2007. The claimant participated. Participating on behalf of the claimant was his attorney Mr. Roland Cauldwell, Legal Services of Muscatine. The employer participated by Sarah Woods, Human Resource Director. Exhibits One through Four were received into evidence.

ISSUES:

The issues in this matter are whether the claimant quit for good cause attributable to the employer or was discharged for misconduct, whether the claimant after leaving employment due to illness attempted to return after recovery was certified and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for this employer from December 6, 2004 until May 1, 2006, when he began a 12-week approved medical leave of absence under the Family Medical Leave Act. Mr. Lake held the position of full-time maintenance technician prior to leaving his employment due to medical reasons. Upon the expiration of his 12-week medical leave, Mr. Lake requested an extension because he had not been released to return by his physician. Mr. Lake was being treated for a serious medical condition which required continued medical care and/or hospitalization. After the claimant's request for an extension of his medical leave of absence was not granted, the employer filled Mr. Lake's position within the company.

Subsequently in February 2007, Mr. Lake was certified by his physician as being medically able to return to full-time employment. Mr. Lake contacted City Carton Company informing them that he had recovered from his illness and had been fully released to return to work. The claimant

offered to perform services for the employer in his regular or a comparable job. The claimant was informed that applications were being taken for a position similar to that he had held with the company and a management individual indicated to Mr. Lake the probabilities of his being rehired were good. Although interviewed, the claimant was not hired for the maintenance job that was open at that time. It is the employer's position that the new job's requirements were higher than the skills possessed by Mr. Lake and, therefore, a different candidate was hired.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds based upon the evidence in the record that Mr. Lake initially left employment because of an illness and upon the advice of a licensing and practicing physician and properly notified the employer of a necessity for the absence. The employer initially consented to the absence by granting the claimant a medical leave of absence under the provisions of the Family Medical Leave Act. After the 12-week period allowed under the Leave Act, the employer was unwilling to extend the leave of absence and filled Mr. Lake's job position. Subsequently after undergoing extensive medical treatment, Mr. Lake was certified by a licensed and practicing physician to be able to return to full-time employment and offered to perform services for the company at his regular or comparable job. Work was not available, although a position was open and the claimant had been interviewed for it.

In this case, the claimant was held to be eligible to receive unemployment insurance benefits based upon a revision of the law enacted by the legislature to provide a method of requalifying for benefits after a separation due to a medical condition unrelated to employment. Under the provisions of the law as enacted, if the claimant returns to the employer with a release to return to work and the individual is ready to work or comparable suitable work is not available, the individual may receive unemployment insurance benefits. The administrative law judge finds that the facts of this case meet the statutory requirements of section 96.5-1-d.

Section 96.5-1-d provides that if an individual has left work voluntarily without good cause attributable to the individual's employer, . . . the individual shall not be disqualified if the department finds that: . . . the individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for the absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the Department, provided the claimant is otherwise eligible.

For the reasons stated herein, the administrative law judge finds that the claimant is eligible to receive unemployment insurance benefits based upon the claimant's attempt to return to work with a full medical release following his non-work-related illness or injury but no work was available to the claimant.

DECISION:

The decision of the representative dated April 3, 2007, reference 01, is affirmed. The claimant is eligible for unemployment insurance benefits, provided that he meets all other eligibility requirements of the law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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