

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRUCE D GILBERT
Claimant

APPEAL NO. 13A-UI-09576-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET
Employer

OC: 06/23/13
Claimant: Appellant (5)

871 IAC 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Bruce Gilbert filed a timely appeal from the August 14, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 24, 2013. Mr. Gilbert participated. Abby Welp represented the employer. The administrative law judge took official notice of the agency's administrative record of the statement Mr. Gilbert provided at the time of the fact-finding interview. Department Exhibit D-1 was received into evidence.

ISSUES:

Whether Mr. Gilbert separated from the employment in June 2013 and, if so, whether he separated for a reason that disqualifies him for unemployment insurance benefits.

Whether Mr. Gilbert has been on a leave of absence that he requested and the employer approved.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Bruce Gilbert commenced his part-time employment with Target in 2011 and worked as a part-time stockman. Mr. Gilbert requested a leave of absence and the employer approved a leave of absence that went into effect at the end of Mr. Gilbert's shift on July 13, 2013. Mr. Gilbert wanted the leave of absence over the summer so that he could go back to school. Mr. Gilbert requested the leave of absence even though his school hours did not conflict with his work hours. The work hours were 4:30 a.m. to 9:00 a.m. The school hours were in the afternoon. At the time the parties agreed to the leave of absence, they also agreed that Mr. Gilbert would return to the employment in the fall. At the time of the September 24, 2013 appeal hearing, both parties indicated that Mr. Gilbert was scheduled to return to the employment during the week of September 29 through October 5, 2013. Both parties expect that Mr. Gilbert will return to the employment under the same conditions as existed prior to the leave of absence.

Mr. Gilbert established a claim for unemployment insurance benefits that was effective June 23, 2013.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

871 IAC 24.23(10) provides:

- (10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The weight of the evidence establishes that Mr. Gilbert was on a leave of absence from July 13, 2013 and continued on a leave of absence at the time of the time of the September 24, 2013 hearing. The leave of absence was a period of voluntary unemployment during which Mr. Gilbert was ineligible for unemployment insurance benefits. Benefits are denied effective July 13, 2013. The ineligibility based on the leave of absence continued as of the September 24, 2013, appeal hearing.

DECISION:

The agency representatives August 14, 2013, reference 01, decision is modified as follows. The claimant was on an approved leave of absence from Target as of July 13, 2013 and continues on the leave of absence at this time. Benefits are denied effective July 13, 2013. The ineligibility based on the leave of absence continues.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css