

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TYLER J WYANT**  
Claimant

**APPEAL NO. 16A-UI-06389-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MCSOIFER'S INC**  
Employer

**OC: 05/15/16**  
**Claimant: Appellant (3/R)**

Iowa Code Section 96.4(3) – Able & Available  
871 IAC 24.23(10) – Leave of Absence  
Iowa Code Section 96.5(1) – Voluntary Quit  
871 IAC 24.27 – Voluntary Quit of Part-time Employment

**STATEMENT OF THE CASE:**

Tyler Wyant filed a timely appeal from the June 3, 2016, reference 01, decision that denied benefits effective May 15, 2016, based on an agency conclusion that Mr. Wyant was on a leave of absence that he requested and the employer approved, was deemed voluntarily unemployed, and was deemed unavailable for work. After due notice was issued, a hearing was held on June 30, 2016. Mr. Wyant participated. Shawn Sorenson, General Manager, represented the employer and presented additional testimony through Katelyn Corrigan, Assistant Manager.

**ISSUES:**

Whether Mr. Wyant has been on an employer-approved leave of absence that he requested since he established his claim for benefits.

Whether Mr. Wyant has been able to work and available for work since he established his claim.

Whether Mr. Wyant has separated from the employment for a reason that disqualifies him for benefits.

Whether the employer's account may be charged for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: McSoifer's, Inc., owns and operates a McDonald's restaurant in Cedar Falls where Tyler Wyant worked as part-time crew member from February 18, 2016 until May 4, 2016. Mr. Wyant generally worked about 28 hours per week. Shawn Sorenson is the restaurant's General Manager. Katelyn Corrigan is an Assistant Manager.

On May 10, 2016, Ms. Corrigan telephoned Mr. Wyant to ask how he was doing and whether he would be appearing for his shift that day. Ms. Corrigan called to ask because Mr. Wyant had

been absent for multiple shifts. Mr. Wyant had been a no-call, no-show for his most recent shift. On May 10, Mr. Wyant said he would not be appearing for work because he was very stressed out and having a breakdown. Mr. Wyant told Ms. Corrigan that he was seeking help. Ms. Corrigan asked Mr. Wyant whether he would like to be placed on a leave of absence while he got things sorted out and Mr. Wyant said he would. Mr. Wyant and Ms. Corrigan did not agree upon a return-to-work date. Ms. Corrigan anticipated that Mr. Wyant would be absent a short period and would soon return to work.

During the week of May 15-21, 2016, Ms. Corrigan made two phone calls to Mr. Wyant. When Mr. Wyant did not answer, Ms. Corrigan left messages. In the first phone message, Ms. Corrigan asked how things were going. In the second phone message, Ms. Corrigan asked when Mr. Wyant planned to return to work. Mr. Wyant did not respond to either call.

On May 27, 2016, Ms. Corrigan again called Mr. Wyant. When Mr. Wyant did not answer, Ms. Corrigan left another message. In the message, Ms. Corrigan told Mr. Wyant that she might contact Mr. Wyant's parents for assistance in getting in touch with Mr. Wyant. Mr. Wyant is 18 years old. Mr. Wyant did not respond to the call. Ms. Corrigan decided against contacting Mr. Wyant's parents.

Mr. Wyant did not return to the employment or make additional contact with the employer. The employer thought Mr. Wyant was a good worker and continued to have work available for him. A doctor had not advised Mr. Wyant to go off work or to quit the employment. Mr. Wyant had not provided the employer with any medical documentation indicating that a doctor had advised him to leave the employment or that it was medically necessary to leave the employment. Mr. Wyant advises that he has been diagnosed with depression and anxiety. Mr. Wyant further advises that he is taking prescribed medication and undergoing counseling to address those issues.

Mr. Wyant established a claim for unemployment insurance benefits that was effective May 15, 2016. Mr. Wyant's base period consists of the four quarters for 2015. McSoifer's, Inc., is not a base period employer for purposes of the claim year that began for Mr. Wyant on May 15, 2016.

Mr. Wyant established the claim the week after he voluntarily went off work and during the week when Ms. Corrigan contacted him in an effort to have him return to the employment. Mr. Wyant has made weekly claims. Mr. Wyant has not kept a log of his job search. Mr. Wyant asserts that he applied at Walmart and Target during the week that ended May 21, 2016. During the weeks that ended May 28 and June 4, Mr. Wyant did not apply for work. Mr. Wyant is unsure whether he applied for work during the week that ended June 11. Mr. Wyant asserts that he applied for work at Pizza Hut and Hy-Vee during the week that ended June 18, 2016. During the week that ended June 25, 2016, Mr. Wyant did not apply for work.

#### **REASONING AND CONCLUSIONS OF LAW:**

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".

Iowa Admin. Code r. 871-24.22(1)a and (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(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.

Iowa Admin. Code r. 871-24.22(2)(1), (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor

market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

The evidence in the record establishes that Mr. Wyant was on an approved leave of absence at the time he established the claim for unemployment insurance benefits that was effective May 15, 2016. The employer had offered the leave of absence as an option to avoid severing the employment relationship. The employer did not sever the employment relationship and continued, as recently as the June 30, 2016, appeal hearing date to welcome Mr. Wyant's return to the employment. However, since Mr. Wyant commenced the approved leave of absence, he has acted as if the employment relationship was severed. His conduct to this point indicated that the employment has indeed been ended and that he has ended it by failing to return to work within a reasonable time after commencing the leave of absence. Mr. Wyant has presented no medical evidence to support the notion that it was medically necessary for him to go off work at all. Indeed, a reasonable person might conclude that the employer's positive feelings toward Mr. Wyant and the experience of being productive at work might well have helped Mr. Wyant cope with his depression and anxiety issues.

Iowa Code § 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. 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 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 individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6)(a) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

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.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Wyant was on an approved leave of absence from May 15, 2016 through June 30, 2016. During that period, Mr. Wyant was voluntarily unemployed and was not available for work within the meaning of the law. Accordingly, Mr. Wyant was not eligible for unemployment insurance benefits for the period of May 15, 2016 through July 2, 2016.

The evidence further indicates that Mr. Wyant has not been otherwise able and available for work since he established his claim. Mr. Wyant's assertion that he has applied for work during some of the week since he filed his claim is unreliable. Mr. Wyant's stated purpose for going off work, his assertion of a spotty job search, his lack of job search record keeping, and his ongoing mental health all point to the conclusion that any job search has not been active or earnest and that Mr. Wyant has not in fact been available for work, at McSoifer's or otherwise, within the meaning of the law.

Based on the evidence in the record and application of the appropriate law, the administrative law judge further concludes that Mr. Wyant voluntarily quit the employment, effective the June 30, 2016 appeal hearing date, by failing to return to the employment within a reasonable time after commencing the approved leave of absence. The quit was without good cause attributable to the employer. The employer's account will not be charged for benefits.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Because the administrative law judge deems Mr. Wyant to have voluntarily quit the part-time employment without good cause attributable to the employer, he is disqualified for benefits based on the wages earned from that employment until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. However, because the quit was from part-time employment and because this employer was not a base period employer, Mr. Wyant remains eligible for benefits based on his base period wage credits from other employers, provided he meets all other eligibility requirements.

This matter will be remanded to the Benefits Bureau for determination of whether Mr. Wyant has been able to work, available for work and engaged in an active and earnest search for work since July 3, 2016. This decision adjudicates those issues for the period of May 15, 2016 through July 2, 2016 and denies benefits for that period.

**DECISION:**

The June 3, 2016, reference 01, decision is modified as follows. For the period of May 15, 2016 through June 30, 2016, the claimant was on an approved leave of absence. For that reason, the claimant is not eligible for benefits for the period of May 15, 2016 through the benefit week that ended July 2, 2016. The claimant did not otherwise demonstrate that he was able to work, available for work, or engaged in an active and earnest search for work during that same period and, for this second reason, is not eligible for benefit for the period of May 15, 2016 through the benefit week that ended July 2, 2016.

The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The quit is deemed effective June 30, 2016. The employer's account will not be charged. The claimant is disqualified for benefits based on the wages earned from the McSoifer's employment until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. However, because the quit was from part-time employment the claimant remains eligible for benefits based on his base period wage credits from other employers, provided he meets all other eligibility requirements.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been able to work, available for work and engaged in an active and earnest search for work since July 3, 2016.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs