IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CHASE T MCMANN
Claimant

WEST SIDE SALVAGE INC
Employer

APPEAL NO. 12A-UI-00168-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/04/11
Claimant: Respondent (5-R)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 30, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 2, 2012. Claimant participated. Amy Jordan, director of human resources at Westside Transport represented the employer. Exhibits One, Two, and Three were received into evidence. The administrative law judge took official notice of the Agency's administrative record (DBRO) of benefits disbursed to the claimant and wages reported by or for the claimant.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Chase McMann was employed by West Side Salvage as a full-time driver/laborer from October 2009 and last performed work for the employer on October 7, 2010. At that point, Mr. McMann started an approved period of vacation. On October 10, 2010, during his period of vacation, Mr. McMann was injured in a motorcycle accident. Mr. McMann had damaged his anterior cruciate ligament (ACL) in his left knee. Mr. McMann was due to return to work on Monday, October 11, 2010. Mr. McMann notified the employer he could not report for work because of the injury he had suffered. Mr. McMann told the employer he was scheduled to undergo an MRI. On October 19, 2010, Mr. McMann notified the employer that he had undergone the MRI and was awaiting the results. On October 22, Mr. McMann notified the employer that he was scheduled to undergo surgery on November 2, 2010. The employer approved Mr. McMann for leave under the Family and Medical Leave Act (FMLA). The leave was to be effective October 11, 2010. The employer initially approved leave through November 29, 2010. On November 5, 2010, Mr. McMann's doctor provided a note that indicated Mr. McMann would need to be off work for four to six months as a result of ACL reconstruction. The employer extended the leave to January 3, 2011, at which point the employer terminated Mr. McMann out of its system because he had not returned at the end of the 12-week FMLA period. Mr. McMann had not at that point been released to return to work and the employer was aware of this.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
>
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
>
> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
>
> c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
>
> d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

This case is similar to another case recently decided by the Iowa Court of Appeals. See Prairie Ridge Addiction Treatment Services vs. Sandra Jackson and Employment Appeal Board, No. 1-874/11-0784 (Filed 19, 2012). While the Prairie Ridge case has not yet been published, it provides guidance for the administrative law judge to follow in analyzing the present case. In Prairie Ridge, Ms. Jackson had requested and been approved for a leave of absence after she was injured in an automobile accident. The employment ended when the employer decided to terminate the employment, rather than grant an extension of the leave of absence once the approved leave period had expired. Like the present case, Ms. Jackson had not yet been released to return to work at the time the employer deemed the employment terminated. The Court held that Ms. Jackson had not voluntarily quit the employment.

The evidence in the present case indicates that the employer elected to terminate the employment effective January 3, 2011 at the end of the FMLA leave period. The employer did this despite knowledge that Mr. McMann had not been released to return to work. Thus, the evidence establishes a discharge, rather than a voluntary quit.

Iowa Code section 96.5-2-a provides:

> An individual shall be disqualified for benefits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
>
> a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
>
> a. “Misconduct” is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The evidence fails to establish any misconduct on the part of Mr. McMann that might serve to disqualify him for unemployment insurance benefits. In the absence of misconduct, the administrative law judge concludes that Mr. McMann was discharged for no disqualifying reason. Mr. McMann is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits

Iowa Code section 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".

871 IAC 24.22(1)a 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.

871 IAC 24.22(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.

While Mr. McMann asserts he has been released to work with no restrictions since he established the claim for unemployment insurance benefits that was effective December 4, 2011, Mr. McMann has presented no medical documentation to support that assertion. Based on the lack of requisite medical evidence, this matter will be remanded to the Claims Division for further investigation and determination of whether Mr. McMann has been able and available to work since he established his claim.

DECISION:

The Agency representative's December 30, 2011, reference 01, decision is modified as follows. The claimant was discharged for no disqualifying reason effective January 3, 2011. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged. This matter is remanded to the Claims Division for further investigation and determination of whether the claimant has been able and available to work since he established his claim.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw