

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

ERIC J WUCHTER

Claimant

and

FAREWAY STORES INC

Employer

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HEARING NUMBER: 20B-UI-09686

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A, 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Eric Wuchter, worked for Fareway Stores from March 16, 2018 until December 31, 2019 as a full-time market clerk. The Claimant had to have shoulder surgery that required him to be off work. He was placed on a medical leave of absence from June 24, 2019 through December 31, 2019. The Employer informed him if he was unable to return by that date, he would no longer have a job.

On October 29, 2019, the Claimant underwent a second surgery for the same shoulder issue. By December 31, 2019, the Claimant had exhausted his short-term disability and FMLA. He was unable to return by the end of the year, and his employment was terminated. His doctor had not yet released him to full duty until June 2, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(d)(2019) provides:

An individual shall be disqualified for benefits: *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:

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.

In the instant case, the Claimant was on a medical leave of absence due to a nonwork-related medical issue for which he had not fully recovered as of December 31, 2019. Once the Claimant's leave expired, he was considered a voluntary quit within the meaning of the statute. However, Iowa law also provides that once the Claimant has been fully released, and he can establish he is able and available for work, he may qualify for benefits. To do so, the Claimant must return to the Employer to offer his services, and should there be no work available, he should file for benefits.

DECISION:

The administrative law judge's decision dated October 9, 2020 is **REVERSED**. The Employment Appeal Board concludes that the Claimant voluntarily quit without good cause attributable to the Employer.

Ashley R. Koopmans

James M. Strohman

AMG/ss