IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TRAVIS D STOTT
Claimant

ALANIZ LLC
Employer

APPEAL NO. 10A-UI-03444-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/24/10
Claimant: Appellant (4)

Section 96.4-3 - Able to and Available for Work
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 23, 2010, reference 03, that concluded he requested and was granted a leave of absence and was not available to work. A telephone hearing was held on April 15, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Derek Johnson. Mike Owens participated in the hearing on behalf of the employer. Exhibits A through D were admitted into evidence at the hearing.

ISSUES:

Was the claimant able to and available for work?

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a machine operator from April 7, 2009, to January 9, 2010. The employer is a direct mail marketer and the claimant's machine operator job involved copying materials for mailings.

The claimant slipped and fell outside of work on January 6, 2010, and injured disks in his back, but he continued to work through January 9, 2010. When his back had not improved by January 10, he went to the emergency room for treatment. He was referred to his regular doctor, Joel Ryon, M.D., who first examined him on January 14.

On January 11, the claimant notified the employer that he was not able to work due on off-the-job injury. On January 19, Ryon released the claimant for light-duty work through the time of his next appointment on February 2. His restrictions included no bending or pushing or pulling. When the claimant provided this work release to the employer, he was informed that the employer did not have work available within these restrictions and he could not return to work.

The claimant filed a new claim for unemployment insurance benefits with an effective date January 24, 2010. As of that date, the claimant did not ask for a leave of absence or intend to quit employment. The employer did not inform the claimant that he was on a leave of absence or was discharged. Since the claimant was not eligible for Family and Medical Leave Act (FMLA) leave, he fell under the employer's policy that allows employees 30 days to return to their regular duties, but if after 30 days, they are not able to return to their job, they are terminated.

The claimant saw Ryon again on February 2, 2010. Ryon completed a medical restriction statement that recommended the claimant be off work until his next recheck, which was listed as three to four weeks. Ryon stated the claimant could only perform sedentary work, involving infrequent lifting of ten pounds or less and no walking or carrying.

The claimant submitted this statement to the employer on February 4 along with an email stating that he had skills and job experience in other areas as a (1) print and web graphic designer, (2) computer repair technician, and (3) customer service and office positions. The claimant has vocational training in graphic design and computer repair and two years of college.

The employer received the restrictions but had no work within the sedentary restrictions set forth in the statement. When the claimant was not able to return to work in his machine operator job as of February 9, 2010, his employment was terminated.

While the claimant worked for the employer, he also worked part time for Printgroup USA as a graphic designer and computer technician. He was off work with that employer until the week of February 14. He returned to his part-time job with Printgroup that week and has worked there ever since, including working up to nine hours in a day. He has worked all the hours available and his medical problems have not affected his ability to perform that work. Since February 14, the claimant has been filing for partial unemployment insurance benefits and reporting his earnings with Printgroup USA.

The claimant has not seen a doctor since February 2 due to the lack of medical insurance. He believes that his condition improved in the later part of February but does not know to what extent.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

The Agency relied on 871 IAC 24.23(10) in denying benefits, which provided that a claimant who requested and was granted a leave of absence is considered voluntarily unemployed and unavailable for work. The claimant, however, did not request a leave of absence and was unaware he was on one. The claimant was not voluntarily unemployed. He was unemployed initially because the employer could not accommodate his medical restrictions and then as of February 9 because the employer terminated his employment due to his inability to perform his regular job, which would not be due to misconduct as defined by 871 IAC 24.32(1).

The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b.

The doctor's statement dated February 2, 2010, submitted by the claimant makes a decision in this case very difficult. The doctor checked "Off work until recheck by regular physician" and "100% sedentary work involving infrequent lifting of 10 pounds or less and no walking or carrying." The rules state that a claimant is considered not available for work if he has a "medical report on file submitted by a physician, stating such individual is presently not able to work." 871 IAC 24.23(6). Nothing was submitted to update or clarify this statement.

On the other hand, the fact that nearly all of the claimant's work experience has been in jobs requiring only sedentary work and he starting working again as a graphic designer during the week of February 14 undercuts the doctor's statement.

In my judgment, the only way to reconcile this conflict is to conclude that the evidence establishes that for unemployment purposes that claimant was unable to work until February 14, 2010, when he demonstrated his ability to again work by returning to work for Printgroup USA. Although the job was part time, this was not due to the claimant's work restrictions but due to the work available there.

DECISION:

The unemployment insurance decision dated February 23, 2010, reference 03, is modified in favor of the claimant. The claimant is qualified to receive unemployment insurance based on the reasons for his separation from work. He is ineligible based on being unable to work through February 13, but eligible for benefits effective February 14, 2010, provided he is otherwise qualified.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

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