

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI A GEBEL
Claimant

APPEAL NO. 17A-UI-04527-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BENNETT PHARMACY INC
Employer

OC: 04/02/17
Claimant: Appellant (5)

Iowa Code Section 96.5(2)(a) – Discharge
Iowa Code Section 96.4(3) – Able & Available
871 IAC 24.2(1)(e) & (g) – Retroactive Benefits

STATEMENT OF THE CASE:

Jodi Gebel filed a timely appeal from the April 19, 2017, reference 01, decision that denied benefits effective April 2, 2017, based on the claims deputy's conclusion that Ms. Gebel had required and the employer had approved a leave of absence. After due notice was issued, a hearing was held on May 18, 2017. Ms. Gebel participated. James Bennett represented the employer. The parties waived formal notice on the issue of whether the claimant had separated from the employment due to a layoff, due to a discharge for misconduct in connection with the employment, and whether the claimant had voluntarily quit without good cause attributable to the employer. Ms. Gebel waived formal notice on the issue of whether she was eligible for retroactive benefits. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KCCO.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jodi Gebel was employed by Bennett Pharmacy as a full-time pharmacy technician and last performed work for the employer on March 29, 2017. Bennett Pharmacy is owned and operated by Ms. Gebel's parents, James and Ann Bennett. Mr. Bennett is a licensed pharmacist. Mr. and Mrs. Bennett, and the company's other licensed pharmacist, were Ms. Gebel's immediate supervisors.

On March 29, 2017, Ms. Gebel was at work when she experienced what she and Mr. Bennett describe as a nervous breakdown. Mr. Bennett concluded that Ms. Gebel's emotional state made her unfit to perform her pharmacy tech duties. Mr. Bennett told Ms. Gebel that she needed to do something to address her extreme emotional state. Mr. Bennett determined that Ms. Gebel would have to go off work and remain off work unless and until she could address

her mental health issues and demonstrate that she was fit to continue in her duties. Ms. Gebel did not request a leave of absence. Rather, Ms. Gebel desired to continue performing her work duties.

On March 30, 2017, Ms. Gebel was admitted to Allen Memorial Hospital. Ms. Gebel remained a psychiatric inpatient for week. Ms. Gebel was then discharged to home and referred for additional outpatient treatment. Ms. Gebel's psychiatrist determined that Ms. Gebel needed to remain off work while she received treatment for depression and anxiety. Ms. Gebel was in regular contact with her parents. On April 7, 2017, Ms. Gebel's psychiatrist provided Ms. Gebel with a medical note that stated as follows:

Jodi Gebel has been under my care since 2006. It is my medical opinion that Jodi A Gebel be excused from work from 4/2/17 until 4/19/17. She will be seen in clinic that day and a determination of a return to work date will be made at that time.

Ms. Gebel's psychiatrist did not release her to return to work at the end of the period referenced in the April 7, 2017 medical note. On April 28, 2017, Ms. Gebel's psychiatrist provided Ms. Gebel with another note that stated as follows:

Jodi Gebel has been a patient of mine since 2006. It is my medical opinion that Jodi A Gebel be excused from work until further notice. She is currently being treated for depression and anxiety. This will require frequent reevaluations of her condition and medical adjustments.

Ms. Gebel shared the April 7 note and the April 28 note with her Mrs. Bennett. As of the May 18, 2017 appeal hearing date, the psychiatrist had not released Ms. Gebel to return to work.

Ms. Gebel established an original claim for unemployment insurance benefits that was effective April 2, 2017. Bennett Pharmacy, Inc. is Ms. Gebel's sole base period employer. When Ms. Gebel applied online for benefits, the confirmation page instructed her that she must make weekly benefit claims to receive weekly benefits. Ms. Gebel made a weekly claim for the weeks that ended April 8 and 15, 2017. Ms. Gebel reported each of those weeks that she had made two employer contacts. Ms. Gebel discontinued her weekly claims after the week that ended April 15, 2017. Ms. Gebel discontinued her weekly claims when she received the April 19, 2017, reference 01, decision from which she appeals in this matter. That decision instructed Ms. Gebel to continue to make weekly claims. Ms. Gebel filed an online appeal from the decision on April 27, 2017. The Appeals Bureau's electronic acknowledgment of the claim instructed Ms. Gebel to continue filing weekly claims. The appeal hearing notice that was mailed to Ms. Gebel on May 4, 2017 again instructed her to continue making weekly claims. As of the May 18, 2017, appeal hearing, Ms. Gebel had made no weekly claims since the week that ended April 15, 2017. The administrative law judge advised Ms. Gebel that she would need to reactivate her claim before she could commence making weekly claims.

REASONING AND CONCLUSIONS OF LAW:

There are a number of issues that must be addressed in deciding this case. The first is the question is whether there was a separation from the employment.

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.

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

Contrary to the conclusion reached in the April 19, 2017, reference 01, decision, Ms. Gebel did not *request* a leave of absence. Rather, Mr. Bennett compelled her to go off work. Since that time, Mr. Bennett has maintained the position that Ms. Gebel will not be allowed to return to the employment unless or until she can demonstrate emotional stability. Mr. Bennett's actions and his stance regarding Ms. Gebel's employment indicate, at minimum, an involuntary suspension of the employment. Because that involuntary suspension is indefinite, the evidence establishes a discharge from the employment that was effective March 29, 2017. Because the discharge was not based on misconduct in connection with the employment, the separation from the employment did not disqualify Ms. Gebel for unemployment insurance benefits or relieve the employer's account of liability for benefits that might be paid to Ms. Gebel. See Iowa Code section 96.5(2)(a) (regarding discharge for misconduct in connection with the employment) and Iowa Administrative Code rule 871-24.32(a) (defining misconduct in connection with the employment). Though the separation from the employment did not disqualify Ms. Gebel for benefits, the law requires that Ms. Gebel meet all other eligibility requirements before she may receive unemployment insurance benefits.

The administrative law judge will next address the question of whether Ms. Gebel has been able to work and available for work since she established that unemployment insurance claim that was effective April 2, 2017.

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 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.

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The evidence in the record establishes that Ms. Gebel has not been able to work and available for work within the meaning of the law since she established the April 2, 2017 unemployment insurance claim. During that entire time, Ms. Gebel has been under the care of a licensed and practicing physician due to significant mental health issues. As of the May 18, 2017 appeal hearing, Ms. Gebel's doctor had not released her to return to work. For this reason, benefits are

denied effective April 2, 2017. This able and available disqualification will continue until Ms. Gebel presents medical proof to Workforce Development that her physician has released her to return to full-time employment.

The remaining question to be addressed is whether Ms. Gebel would be eligible for retroactive benefits if she met all other eligibility requirements.

Iowa Administrative Code rule 871-24.2(1)(e) and (g) provide as follows:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.
24.2(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's account at a financial institution or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

The department retains the ultimate authority to choose the method of reporting and payment.

g. No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

An individual claiming benefits using the weekly voice continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

The individual shall set forth the following:

- (1) That the individual continues the claim for benefits;
- (2) That except as otherwise indicated, during the period covered by the claim the individual was unemployed, earned no wages and received no benefits, was able to work and available for work;
- (3) That the individual indicates the number of employers contacted for work;
- (4) That the individual knows the law provides penalties for false statements in connection with the claim;
- (5) That the individual has reported any job offer received during the period covered by the claim;
- (6) Other information required by the department.

In October 2016, Workforce Development discontinued telephonic weekly claims reporting and began requiring claimants to make online weekly claims via the Agency's website. These were the weekly claims reporting instructions Ms. Gebel received at the time she established her original claim for benefits. The weekly claim reporting requirement is set forth in the handbook Ms. Gebel agreed to read, know and follow when she made her original application for benefits. The weekly claim reporting requirement was referenced in the April 19, 2017, reference 01, decision, in the April 27, 2017 acknowledgment of receipt of the appeal, and in the appeal hearing notice that was mailed to Ms. Gebel on May 4, 2017. Ms. Gebel's failure to heed the weekly claim reporting instructions, especially in the context of the Agency's repeated reference to the reporting requirement, does not establish good cause grant Ms. Gebel's request for retroactive benefits. The request for retroactive benefits is denied.

DECISION:

The April 19, 2017, reference 01, decision is modified as follows. The claimant was discharged on March 29, 2017 for no disqualifying reason. The discharge did not disqualify the claimant for benefits. The employer's account may be assessed for benefits.

The claimant has been ill, under the care of a physician, and not released to return to work. Accordingly, the claimant has not been able to work and available for work within the meaning of the law since she established her claim for benefits. Benefits are denied effective April 2, 2017. The able and available disqualification will continue until the claimant presents medical proof to Workforce Development that her physician has released her to return to full-time employment. The claimant must meet all other eligibility requirements.

The claimant's request for retroactive benefits is denied for lack of good cause shown.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs