

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD A FREED
Claimant

APPEAL NO. 10A-UI-06999-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 03/28/10
Claimant: Appellant (1)

Section 96.5(1)d – Separation due to Illness
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Donald Freed filed an appeal from a representative's decision dated May 5, 2010, reference 01, which denied benefits based on his separation from Stream International, Inc. After due notice was issued, a hearing was held by telephone on August 4, 2010. Mr. Freed participated personally and was represented by Frank Tenuta, Attorney at Law. The employer responded to the notice of hearing but the designated witness was not available at the number provided at the scheduled time of the hearing.

ISSUE:

At issue in this matter is whether Mr. Freed was separated from employment for any disqualifying reason. There is also the issue of whether he is able to work.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Freed began working for Stream International, Inc. on October 5, 2009 as a full-time customer service representative. His last day of work was March 29, 2010. He presented the employer with a doctor's notice indicating he would need to be excused from work due to medical issues. He did not know how long he would need to be gone. He was not eligible to take a leave of absence because of the short duration of his employment. He was told he would have to quit if he wanted to be considered for rehire by May 5, 2010. Mr. Freed then resigned.

Mr. Freed filed a claim for job insurance benefits effective March 28, 2010. As of the date of the hearing, he had not been released by his doctor to perform any type of work.

REASONING AND CONCLUSIONS OF LAW:

Mr. Freed left his employment on the advice of his doctor because of a medical condition that was neither caused nor aggravated by his employment. He gave the employer immediate notice of the need to be absent. However, he is not entitled to job insurance benefits because

he has not recovered from his illness as required by Iowa Code section 96.5(1)d. The term "recovered" as used in section 96.5(1)d means the individual is able to work without restrictions or limitations. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). Mr. Freed's testimony establishes that he has not recovered from his condition as he has not been released to perform any work activities.

Mr. Freed was not compelled to quit or be discharged within the intent and meaning of 871 IAC 24.26(21). This section was intended for those situations where an employer has already made a decision to end the employment relationship but offers the individual an opportunity to resign. There was no evidence that Stream International, Inc. intended to discharge Mr. Freed if he did not quit on March 29, 2010. If he had not quit, he may have been discharged at some future point for missing too much work. However, if and when he might be discharged is purely speculative. Mr. Freed quit in order to be considered for rehire in the future.

In order to receive job insurance benefits, an individual must be physically and mentally able to engage in some form of gainful employment. Iowa Code section 96.4(3). In the case at hand, Mr. Freed is unable to engage in any work activity and has been unable to do so since the effective date of his claim for job insurance benefits. Therefore, it must be concluded that he has not satisfied the availability requirements of the law at any point since March 28, 2010.

DECISION:

The representative's decision dated May 5, 2010, reference 01, is hereby affirmed. Mr. Freed is disqualified from receiving job insurance benefits until such time as he has been released by his doctor to resume work activity and re-offered his services to the employer, provided there is no suitable comparable work available at that time and provided he is otherwise eligible. He will need to provide proof of his doctor's release to his local Workforce Development office.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css