

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLINTON E LAMBERT
Claimant

APPEAL NO: 13A-UI-09239-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LISLE CORPORATION
Employer

**OC: 07/14/13
Claimant: Appellant (2)**

871 IAC 24.26(21) – Forced Resignation
Section 96.5-2-a – Discharge
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a department decision dated August 7, 2013, reference 01, that held he was voluntarily quit without good cause due to illness or injury on July 19, 2013, and benefits are denied. A telephone hearing was held on September 13, 2013. The claimant participated. The employer did not participate.

ISSUES:

Whether claimant was forced to quit employment.

Whether claimant was discharged for misconduct in connection with employment.

Whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on November 7, 2011, and last worked for the employer as full-time production on July 14, 2013. Claimant notified HR on July 15 his son was in an accident and he would be absent from work. HR requested claimant resign from employment, take some time off and he could re-apply for his job at a later time. Claimant resigned. Claimant has no medical restriction on his return to work.

The employer HR representative stated at department fact finding it was not protesting claimant's unemployment claim. The employer did not respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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.

The administrative law judge concludes employer forced claimant to resign his employment that is a discharge for no act of misconduct in connection with employment on July 15, 2013.

Claimant was forced to resign in light of his employer notification about an absence from work that is considered a voluntary quit with good cause.

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".

The administrative law judge further concludes claimant does meet the availability requirements of the law effective July 14, 2013. There is no medical restriction on claimant to work.

DECISION:

The department decision dated August 7, 2013, reference 01, is reversed. The claimant was forced to resign that was not a discharge for misconduct on July 15, 2013. Benefits are allowed, provided claimant is otherwise eligible. Claimant is able and available for work.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css