

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JONATHAN W EARLE
Claimant

APPEAL 15A-UI-10485-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST SIDE TRANSPORT INC
Employer

**OC: 08/16/15
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 9, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on October 2, 2015. Claimant participated. Employer did not participate. Claimant's Exhibit A was received.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a driver and trainer from May 10, 2012, and was separated from employment on March 13, 2015, when he was discharged.

On March 12, 2015, claimant had a seizure while he was sleeping and his driving partner was driving. Claimant went to the hospital. The next day, employer informed claimant he could no longer drive without clearance from a doctor.

The Federal Motor Carrier Safety Administration does not allow individuals who have had one unprovoked seizure to drive unless they have a normal EEG and a doctor's approval or are seizure-free and off medication for five years. On May 28, 2015, claimant had an EEG that was abnormal.

Claimant has been looking for factory work. Claimant worked in a factory prior to driving truck.

REASONING AND CONCLUSIONS OF LAW:

As an initial matter, claimant was discharged and did not voluntarily quit his employment. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Here, claimant had no intention to end his employment.

The next issue is whether claimant was discharged for a disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Here, claimant was discharged because of his medical condition. Claimant did not engage in any misconduct. His discharge was not for a disqualifying reason.

The next issue is whether claimant is able and available to work.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "Claimant's ability to work is not measured by the job he held most recently, but by standards of his education, training, and work history. He is considered able to work even if he cannot return to a job as most recently performed for the employer. Here, claimant is able and available for factory work. Thus the claimant is considered as able to work as of March 13, 2015.

DECISION:

The September 9, 2015, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. The claimant is able to work and available for work effective March 13, 2015. Benefits are allowed, provided he is otherwise eligible.

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Decision Dated and Mailed

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