

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENNETH W WALKER**  
Claimant

**APPEAL NO. 13A-UI-03645-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST VAN EXPEDITED INC**  
Employer

**OC: 02/24/13**  
**Claimant: Appellant (5)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Kenneth Walker filed a timely appeal from the March 22, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 29, 2013. Mr. Walker participated. Sandy Matt, Human Resources Specialist, represented the employer.

**ISSUES:**

Whether Mr. Walker separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

Whether Mr. Walker has been able to work and available for work since he established his claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Kenneth Walker was employed by CRST Van Expedited as a full-time over-the-road truck driver from 2009 and last performed work for the employer on September 8, 2012. Mr. Walker's immediate supervisor was Austin Filer, Fleet Manager. Mr. Walker went off work in September after his foot went numb while he was operating the employer's tractor-trailer. Mr. Walker followed up with a doctor and learned that he needed to undergo surgery on his leg. The surgery involved a bypass or placement of a stent to allow blood flow to the foot. Mr. Walker applied for and the employer approved a leave of absence under the Family and Medical Leave Act. The FMLA leave expired on November 25, 2012. As of that date, Mr. Walker had not been released by his doctor to return to work. Mr. Walker had telephone contact with Mr. Filer. During that telephone contact, Mr. Walker told Mr. Filer that his doctor had not yet released him to return to work and that his doctor had provided him with a note to extend the leave by 90 days. Mr. Filer told Mr. Walker that the employer could no longer hold his job in light of exhaustion of the FMLA leave period. Mr. Walker offered to fax the doctor's note. Mr. Filer told Mr. Walker he was welcome to reapply once his doctor had released him to return to work. Mr. Walker and the employer have had no further contact outside of unemployment insurance proceedings.

Mr. Walker established an Iowa claim for unemployment insurance benefits that was effective February 24, 2013. At that point, Mr. Walker had been off work five months due to a medical condition. Mr. Walker's doctor has never provided Mr. Walker with a release to return to work. Mr. Walker has not provided Iowa Workforce Development with any medical documentation indicating that he has been released by his doctor to return to work.

### **REASONING AND CONCLUSIONS OF LAW:**

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

This case is similar to another case recently decided by the Iowa Court of Appeals. See Prairie Ridge Addiction Treatment Services vs. Sandra Jackson and Employment Appeal Board, No. 1-874/11-0784 (Filed January 19, 2012). While the Prairie Ridge case has not yet been published, it provides guidance for the administrative law judge to follow in analyzing the present case. In Prairie Ridge, the claimant had requested and been approved for a leave of absence after she was injured in an automobile accident. The employment ended when the employer decided to terminate the employment, rather than grant an extension of the leave of absence once the approved leave period had expired. Like the present case, Ms. Jackson had not yet been released to return to work at the time the employer deemed the employment terminated. The court held that Ms. Jackson had not voluntarily quit the employment. The Court further held that since Ms. Jackson had not voluntarily quit, she was not obligated to return to the employer and offer her services in order to be eligible for unemployment insurance benefits.

The evidence in the present case indicates that the employer elected to terminate the employment effective November 25, 2012, at the end of the FMLA leave period. The employer did this despite knowledge that Mr. Walker had not been released by a doctor to return to work. The evidence establishes a discharge, rather than a voluntary quit.

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.

871 IAC 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.

The evidence fails to establish any misconduct on the part of Mr. Walker that might serve to disqualify him for unemployment insurance benefits. In the absence of misconduct, the administrative law judge concludes that Mr. Walker was discharged for no disqualifying reason. Mr. Walker is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

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".

871 IAC 24.22(1)a and (2) provide:

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.

(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.

The weight of the evidence established that Mr. Walker suffered from a medical condition that made him unable to work for months. Mr. Walker has provided no medical documentation to indicate that he has been released to return to any type of work before or since he established his unemployment insurance benefits. For that reason, the administrative law judge concludes that Mr. Walker has not proven, by a preponderance of the evidence, that he has been able to work or available for work since he established his claim for benefits and that Mr. Walker is not eligible for benefits. Benefits are denied effective February 24, 2013. The able and available disqualification continues as of the date of the appeal hearing and will continue until Mr. Walker provides adequate proof to Iowa Workforce Development that he has been released to return to work. Mr. Walker would have to otherwise meet the able and available requirements and other eligibility requirements.

#### **DECISION:**

The Agency representative's March 22, 2013, reference 01, decision is modified as follows. The claimant was discharged from the employment effective November 25, 2012 for no disqualifying reason. The separation from the employment did not disqualify the claimant for benefits, and he would be eligible for benefits if he met all other eligibility requirements. The employer's account may be charged for benefits.

The claimant has not demonstrated that he has been able to work and available for work since he established his claim for benefits. Benefits are denied effective February 24, 2013. The able and available disqualification continues as of the date of the appeal hearing and will continue

until the claimant provides adequate proof to Iowa Workforce Development that he has been released to return to work. The claimant must otherwise meet the able and available requirements and other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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