

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN A STEWART
Claimant

APPEAL NO. 13A-UI-12087-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES
Employer

OC: 10/06/13
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Nathan Stewart filed a timely appeal from the October 25, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 10, 2013. Mr. Stewart participated and presented additional testimony through Hoa Duong. Turkessa Newsome represented the employer and presented additional testimony through Tamara Smith. Exhibits A and B were received into evidence.

ISSUES:

Whether Mr. Stewart separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer of liability for benefits.

Whether Mr. Stewart has been able to work and available for work within the meaning of the law since he established his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Nathan Stewart was employed by APAC Customer Services as a full-time customer service representative from April 2013 and last performed work for the employer on June 12, 2013. On June 16, 2013, Mr. Stewart suffered a head injury in non-work-related accident. Mr. Stewart fractured his skull and neck. Mr. Stewart was initially hospitalized at the University of Iowa Hospitals & Clinics for several days. Mr. Stewart was then released to go home with instructions to return for follow up medical appointments. Mr. Stewart was in a neck brace. The employer approved a leave of absence not to exceed the length of Mr. Stewart's employment. That leave of absence expired on September 4, 2013 and the employer expected Mr. Stewart to return to work on September 4, 2013. However, Mr. Stewart had not been released to return to work at that time.

On September 3, 2013, Mr. Stewart returned to the University of Iowa Hospitals & Clinics Department of Neurology for a follow up appointment. At that time the health care provider

provided Mr. Stewart with a medical excuse that excused Mr. Stewart from work until October 3, 2013. Mr. Stewart immediately provided the medical excuse to the employer.

On September 5, 2013, Pamela Abaigar, APAC Workers' Compensation & Leaves Administrator, telephoned Mr. Stewart to tell him that his absence from the workplace had exceeded his period of employment and that he was terminated from the employment under the employer's leave policy. Mr. Stewart told Ms. Abaigar that he needed to be off work another month. At no time did Mr. Stewart notify the employer that he intended to voluntarily quit the employment.

Mr. Stewart did not return to the employer to offer his services.

Mr. Stewart established a claim for unemployment insurance benefits that was effective October 6, 2013. Mr. Stewart waited to establish the claim until after he was released by his doctor to return to work. Since Mr. Stewart established the claim for benefits, he had made two or more job contacts each week.

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.

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.

This case is remarkably similar to another case decided by the Iowa Court of Appeals in 2012. 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, Ms. Jackson had requested and been approved for a leave of absence after she was injured in a non-work-related 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 after recovering in order to demonstrative eligibility for unemployment insurance benefits.

The evidence indicates that Mr. Stewart commenced an approved leave of absence on or about June 16, 2013, based on a non-work-related accident and injury. On September 5, 2013, the employer elected to terminate the employment rather than grant a one-month extension of the leave. At the time the initial leave period expired, Mr. Stewart had not been released by his doctor to return to work. Mr. Stewart was released to return to work October 3, 2013. Mr. Stewart did not voluntarily quit the employment. Instead, the employer discharged Mr. Stewart based on his inability to return to work on September 4, 2013. Mr. Stewart did not refuse to return to work. Instead, Mr. Stewart's doctor had not yet released him to return to work. The employer's decision to end the employment was not based on any misconduct on the part of Mr. Stewart and, therefore, did not disqualify Mr. Stewart for unemployment insurance benefits. Because Mr. Stewart did not voluntarily quit the employment, he was under no obligation, after being discharged from the employment, to return to the employer to offer his services upon being released by his doctor to return to work. Mr. Stewart was discharged for no disqualifying reason. Mr. Stewart 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 indicates that Mr. Stewart had been released by a doctor to return to work at the time he established his claim for benefits. The evidence further indicates that since Mr. Stewart established his claim he has made an active and earnest search for new employment by making two or more job contacts per week. Mr. Stewart has been able and available for work since he established his claim. Accordingly, Mr. Stewart is eligible for benefits provided he meets all other eligibility requirements.

DECISION:

The Agency representative's October 25, 2013, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason on September 5, 2013. The claimant has been able to work and available for work since he established his claim. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css