

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES J PETSCHÉ
Claimant

APPEAL NO. 07A-UI-03378-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MALL SERVICE CENTER
Employer

**OC: 02/25/07 R: 03
Claimant: Appellant (2)**

Section 96.5(1)d – Separation Due to Injury

STATEMENT OF THE CASE:

James Petsche filed an appeal from a representative's decision dated March 23, 2007, reference 01, which denied benefits based on his separation from Mall Service Center. After due notice was issued, a hearing was held by telephone on April 18, 2007. Mr. Petsche participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Petsche was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Petsche has been employed by Mall Service Center for approximately four years. He works full time in the employer's lawn care and landscaping business. He last performed services on or about August 28, 2006. Mr. Petsche injured his back while shoveling dirt at work. He was released to return to work approximately two weeks after August 28 but had a 15-pound lifting restriction. He notified the employer of the release and also notified the employer that he needed treatment for tennis elbow.

Mr. Petsche received medical treatment for tennis elbow on September 12 and was referred to an orthopedist. He was seen by the orthopedist on October 4 and advised to remain off work until his next appointment on November 28. On November 28, he was released to work with a 30-pound lifting restriction. The release was provided to the employer. He did not return to work at that point, apparently because of the seasonal nature of the employer's work. Mr. Petsche spoke to the owner of the business approximately one week before the April 18 hearing and advised the employer that he had a full release to work. As of the date of the hearing, he had not been recalled to work and was still receiving workers' compensation.

REASONING AND CONCLUSIONS OF LAW:

Mr. Petsche left work on August 28, 2006 because of a work-related injury to his back. As of the effective date of his claim for job insurance benefits, February 25, 2007, Mr. Petsche had been released to work, with lifting restrictions. The law does not require a complete recovery when an individual re-offers his services to the employer following a work-related injury. See Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa 1985). Because Mr. Petsche has continued to receive workers' compensation through the date of the hearing, the administrative law judge concludes that his absence from work beginning August 28, 2006 was due to a work-related injury. He re-offered his services when he was released prior to filing his claim but was not provided work. As such, he is entitled to job insurance benefits pursuant to Iowa Code section 96.5(1)d.

DECISION:

The representative's decision dated March 23, 2007, reference 01, is hereby reversed. Mr. Petsche was separated from employment for no disqualifying reason and has satisfied the provisions of Iowa Code section 96.5(1)d. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs