IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

BENNY F MCDANIEL Claimant **HEARTLAND EXPRESS INC OF IOWA** Employer	**APPEAL 16A-UI-05900-NM-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/01/16** **Claimant: Appellant (1)**

Iowa Code §96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 17, 2016 (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 June 13, 2016. Claimant participated and testified. Employer participated through human resources representative Renae Meyers. Claimant's Exhibit A was received into evidence.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On February 16, 2011, claimant began working for employer as a full-time truck driver. In April 2016, claimant suffered a stroke that left him legally blind in his right eye. Claimant's stroke was not caused by his work. Since that time, claimant has been unable to work pursuant to medical advice from physicians and the Department of Transportation regulations. (Exhibit A). On April 20, 2016, claimant called the employer, informed them of his situation, and stated that, because he could not drive, he was resigning effective immediately.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is voluntarily quit his employment without good cause attributable to the employer.

Iowa Code § 96.5-1-d provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:
>
> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(35) provides:

> Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:
>
> (a) Obtain the advice of a licensed and practicing physician;
>
> (b) Obtain certification of release for work from a licensed and practicing physician;
>
> (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
>
> (d) Fully recover so that the claimant could perform all of the duties of the job.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

> "Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Subsection d of Iowa Code § 96.5(1) provides an exception where:

> The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a

> licensed and practicing physician, the individual returned to the employer and offered to perform services and … the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

The statute specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is *fully* recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346; *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n.*, 468 N.W.2d 223, 226 (Iowa 1991) (noting the full recovery standard of section 96.5(1)(d)). In the Gilmore case he was not fully recovered from his injury and was unable to show that he fell within the exception of section 96.5(1)(d). Therefore, because his injury was not connected to his employment and he had not fully recovered, he was considered to have voluntarily quit without good cause attributable to the employer and was not entitled to unemployment benefits. See *White*, 487 N.W.2d at 345; *Shontz*, 248 N.W.2d at 91.

Claimant voluntarily left his position after having a stroke that left him blind in one eye and unable to continue to drive commercially. Claimant has not established that the medical condition was work related, as is his burden; thus, he must meet the requirements of the administrative rule cited above. He has not been released to return to full work duties and, for unemployment insurance benefits purposes, the employer is not obligated to accommodate a non-work related medical condition. It is likely claimant's medical condition is permanent and possible that, given the severity of the his restrictions, he is permanently disabled and unable to work in any meaningful, gainful employment. However, this decision only applies to unemployment insurance benefits, which are not designed to provide health or disability insurance. See, *Gilmore v. Emp't Appeal Bd., supra*. Claimant may seek private or Social Security (SSD or SSI) disability benefits through a private attorney or legal assistance program. While claimant's situation is certainly unfortunate, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The May 17, 2016 (reference 01) unemployment insurance decision is affirmed. The claimant was separated from employment without good cause attributable to the employer. Benefits are withheld until such time as he is deemed eligible.

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Nicole Merrill
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

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Decision Dated and Mailed

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