

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEITH E FORREST
Claimant

APPEAL NO. 11A-UI-12965-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

**OC: 08/28/11
Claimant: Appellant (5)**

Section 96.5(2)a – Discharge
Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Keith Forrest, filed an appeal from a decision dated September 27, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 27, 2011. The claimant participated on his own behalf and was represented by Erin Dooley. The employer, Heartland Express, participated by Human Resources Generalist Lea Peters and Fleet Supervisor Brian Janssen.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Keith Forrest was employed by Heartland from March 9 until August 28, 2011 as a full-time over-the-road driver. On August 26, 2011, he was dispatched by Fleet Supervisor Brian Janssen for a pick-up in Wisconsin on Sunday, August 28, 2011, for delivery in Missouri at 4:00 a.m. on Monday, August 29, 2011. He refused because he did not want to drive at night and that caused him trouble sleeping during the day.

It is customary for over-the-road drivers to drive at night according to the needs of the customers. Mr. Forrest had never indicated he had any physical disabilities that made it impossible for him to drive at night and had, in fact, driven at night during the course of his employment. He had trouble sleeping during the day and did not like it when the employer would contact him on the truck computer or the cell phone. He could have muted both means of communication to allow an uninterrupted sleep. The employer never denied him the federally required ten hours of non-driving time at any point in his employment.

During the conversation on August 26, 2011, with the claimant, Mr. Janssen did tell the claimant that night driving was going to be necessary as a driver for Heartland. The employer intended to discuss it with him further on Monday, August 29, 2011, but the claimant hung up on him. The employer tried to contact him again, but Mr. Forrest refused to answer the phone. The

claimant dropped off the tractor at the North Liberty, Iowa, terminal some time on Sunday, August 28, 2011, leaving other company property in the cab. He refused to return Mr. Janssen's phone calls after that date.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 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.

The claimant maintains he was discharged because Mr. Janssen had allegedly told him if he could not drive at night, he could not drive for Heartland. The supervisor did say driving at night was an ordinary part of the job which Mr. Forrest had been doing for some time. This is not a discharge. Even if he had said that if the claimant would not drive at night he could not work for Heartland, this is not a discharge but only a statement of fact and it would be up to the claimant if he chose to do his work as instructed or not.

Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer. *LaGrange v. IDJS*, (Unpublished, Iowa App. 1984). The administrative law judge considers the reasoning in that case to be pertinent here.

There was continued work available to the claimant had he been willing to continue performing his job duties. He had not presented any documentation from a physician to the employer that would have required Heartland to accommodate a physical restriction. He had not requested to see a doctor or requested time off for medical treatment.

The record establishes the claimant quit because he did not want to perform the regular job duties of an over-the-road driver. This is not good cause attributable to the employer and he is disqualified.

DECISION:

The representative's decision of September 27, 2011, reference 01, is modified without effect. Keith Forrest quit work without good cause attributable to the employer. He is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw