

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAN G BACHMAN**

Claimant

**APPEAL NO. 09A-UI-04163-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**

Employer

**OC: 02/08/09**

**Claimant: Appellant (1)**

Section 96.5-1-d – Voluntary Quit for Medical Reasons

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Dan Bachman (claimant) appealed a representative's March 5, 2009 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Heartland Express (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 9, 2009. The claimant participated personally. The employer participated by Lea Peters, Human Resources Generalist. The claimant offered and Exhibit A was received into evidence.

**ISSUES:**

Whether the claimant is denied unemployment insurance benefits because he voluntarily quit work without good cause attributable to the employer.

Whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on December 28, 2005, as a full-time systems driver. The claimant was unable to work due to a medical condition from October 24 to November 12, 2008. He took personal leave. On November 12, 2008, the claimant applied for Family Medical Leave (FMLA). The employer granted his leave through February 4, 2009. The claimant was unable to return to work on February 4, 2009. On March 3, 2009, the claimant obtained a restricted release to return to work. The claimant has not been released to return to work without restriction by his physician.

**REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code section 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982).

The claimant left work due to an injury under the advice of his physician. The employer consented to his leaving. The claimant has failed to provide the employer with certification that he has recovered. In addition, the claimant has failed to offer his services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits. The claimant may re-qualify by returning to the employer with an unconditional release. The claimant could then receive benefits if regular work or comparable suitable work was not available.

The next issue is whether the claimant was able and available for work. For the following reasons, the administrative law judge concludes he is as of March 3, 2009.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant did not receive a restricted release to return to work until March 3, 2009. He is considered to be available for work after March 3, 2009. The claimant is not disqualified from receiving unemployment insurance benefits beginning March 3, 2009.

**DECISION:**

The representative's March 5, 2009 decision (reference 02) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible. The claimant may re-qualify by returning to the employer with an unconditional release. The claimant could then receive benefits if regular work or comparable suitable work was not available. The claimant is considered to be able and available for work after March 3, 2009. The claimant is not disqualified from receiving unemployment insurance benefits beginning March 3, 2009.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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