

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L PHILLIPS

Claimant

APPEAL NO. 10A-UI-04652-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 02/21/10

Claimant: Respondent (2-R)

Section 96.5-1-d – Voluntary Quitting
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

Heartland Express Inc of Iowa filed a timely appeal from a representative's decision dated March 17, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits upon a finding that the claimant offered to return to work following an illness or injury and no work was available.

ISSUE:

The issue is whether the claimant left employment because of an illness or injury on the advice of a physician and upon being certified as recovered attempted to return to work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: David Phillips was employed as an over-the-road tractor/trailer driver for Heartland Express from October 19, 2005 until September 14, 2009 when he left employment because of a non-work-related illness or injury. Mr. Phillips requested and was granted a medical leave of absence under the Family Medical Leave Act. Heartland Express authorized the claimant to be gone on a medical leave of absence of twelve weeks. The claimant's medical leave of absence expired December 7, 2009. On January 5, 2010, Mr. Phillips contacted Heartland Express exploring the possibility of later returning to work for the company. At that time his recovery was not certified by a licensed and practicing physician. On February 5, 2010, Mr. Phillips' physician certified his recovery from his illness or injury. Mr. Phillips has not contacted the employer and offered to return to work and perform services at his regular or comparable work since being certified by a licensed and practicing physician as being fully recovered.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant was separated from his employment 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.

871 IAC 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 evidence in the record establishes that the claimant has not returned to the employer and offered to perform services in his regular work or comparable suitable work after being released to return to full work duties. His recovery was certified by a licensed and practicing physician. When the claimant contacted Heartland Express Inc of Iowa on January 5, 2010, he had not been certified by a physician as being released to return to full work duties and the employer was not obligated to accommodate a non-work-related medical condition. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated March 17, 2010, reference 01, is reversed. Claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, providing that he is otherwise eligible to until such time as the claimant obtains a full release without restriction to return to regular duties and offers services to

the employer and the employer has no comparable or suitable work available. The issue of whether the claimant must repay the overpayment of unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs