

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RANDY C GREGORY**  
Claimant

**APPEAL NO. 13A-UI-00413-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**OC: 12/09/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated January 4, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 12, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Dave Dalmasso participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as an over-the-road truck driver from July 9, 2003, to March 9, 2012. After March 9, he was off work due to a work-related back injury.

The employer's insurance company denied that his injury was work-related on May 15, 2012, but the claimant contested this denial. The employer, however, took the position that the claimant would have to go on Family and Medical Leave Act (FMLA) leave, which expired after a two-week extension on August 22, 2012.

The claimant had back surgery on August 9, 2012. Around that time, he spoke to a human resource's representative, Lea Peters and told her that there was no way that he would be able to return to his job with the employer as of August 22.

The claimant was unable to return to work as of August 22 due to recovery time after his surgery, and he had informed Peters of that fact. On August 24, Peters wrote a letter to the claimant stating that since he had exhausted his leave, had not returned to work, and had not updated the employer regarding his medical status, the employer would document his separation as a resignation. The letter informed the claimant that he could reapply for employment if he was released to work. He was told that a separate COBRA letter would be sent to him to give him information about health insurance coverage since his employment was terminated. The claimant never informed the employer that he was resigning and had informed Peters about his medical status prior to August 22. He considered the letter as terminating his employment.

After the claimant was released to work by his doctor with a weight restriction, he applied for unemployment insurance benefits effective December 9, 2012. He began contacting at least two employers every week regarding jobs within his restrictions. He secured full-time employment as a truck driver with a construction company on February 5 and stopped filing for unemployment insurance benefits.

In January 2013, the claimant had a hearing regarding his workers' compensation claim and was awarded benefits for his work-related injury.

### **REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

In this case, the employer informed the claimant that he was separated from employment because he did not return to work after the expiration of his approved leave and had not informed the employer of his medical status. In fact, the claimant had told Lea Peters that there was no way he could return work as of the date his leave ended. The separation should be treated as a discharge by the employer due to the claimant being unable to return to work due to what was determined to be a work-related injury. No misconduct as defined by the unemployment insurance law has been established in this case. See 871 IAC 24.32(1).

The next issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that requires heavy lifting. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, as shown by the fact that he claimant is reemployed with his restrictions, and the claimant was actively looking for such work in compliance with the requirements of the law.

### **DECISION:**

The unemployment insurance decision dated January 4, 2013, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs