

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

BERRY L HENKEL

Claimant

PRECISION TRANSMISSION SERVICE

Employer

APPEAL 22A-UI-18745-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/16/22

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit from Employment

Iowa Admin. Code r. 871-24.26(6)b—Separation because of Illness, Injury, or Pregnancy

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding

STATEMENT OF THE CASE:

On November 8, 2022, employer Precision Transmission Service filed an appeal from the November 4, 2022 (reference 01) unemployment insurance decision that allowed benefits based on a determination that claimant was discharged on September 15, 2022, and the employer failed to establish claimant was discharged for willful or deliberate misconduct. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Friday, December 2, 2022. The claimant, Berry L. Henkel, participated. The employer, Precision Transmission Service, participated through co-owner Julie Merfeld. The administrative law judge took official notice of the administrative record.

ISSUES:

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

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: Claimant was hired to work for Precision Transmission Service on March 12, 2002. He worked full-time hours for the employer as an R and R employee, removing and re-installing transmissions. Claimant's employment ended on September 15, 2022, when he presented his final restrictions, and the employer had no work available for him.

In March or April 2022, claimant suffered an injury at work. He reported his injury to the employer and worked with the employer, a medical provider, and the worker's compensation carrier during his recovery. Ultimately, claimant's doctor released him from care in September with a 20-pound lifting-at-the-waist restriction and a ten-pound lifting-over-the-head restriction. The job claimant held previously required him to lift transmissions over his head and into

vehicles, and the employer had no work available that would fit within claimant's restrictions. Therefore, claimant was forced to separate from employment.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,134.00, since filing a claim with an effective date of October 16, 2022, for the two weeks ending October 29, 2022. The administrative record also establishes that the employer did participate in the fact-finding interview. Luke Merfeld participated on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes claimant's separation is with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

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.

Iowa Admin. Code r. 871-24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is

corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

While a claimant must generally return to offer services upon recovery, subparagraph (d) of Iowa Code section 96.5(1) is not applicable where it is impossible to return to the former employment because of medical restrictions connected with the work. See *White v. Emp't Appeal Bd.*, 487 N.W.2d 342 (Iowa 1992). Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. *Shontz v. Iowa Emp't Sec. Comm'n*, 248 N.W.2d 88 (Iowa 1976). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. *Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787 (Iowa 1956).

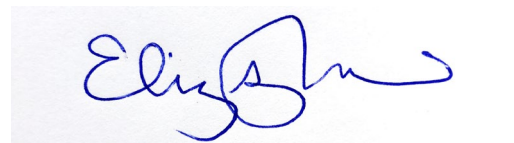
In this case, the claimant notified the employer at the time he suffered his work-related injury. He kept the employer updated as he received medical treatment, and he provided the employer with the release he received once his doctor had released him with his final physical restrictions. The parties are essentially at an impasse, with the claimant unable to safely perform his former job due to the work-related injury he sustained and the employer unable to provide claimant with a job that fits within his restrictions. Under Iowa employment security law in this scenario, benefits are allowed.

As the employer did not learn about claimant's dishonesty in connection with his driver's license until after the separation from employment, that plays no role in the eligibility for benefits.

Because claimant is eligible for benefits based on this separation the issues of overpayment and chargeability are moot.

DECISION:

The November 4, 2022 (reference 01) unemployment insurance decision is affirmed. Claimant separated from employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment and chargeability are moot.



Elizabeth A. Johnson
Administrative Law Judge

December 6, 2022
Decision Dated and Mailed

mh

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.