

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RICHARD L TAYLOR
2012 NICKLAUS DR
MISSION TX 78572-8954

SCHUSTER COMPANY
2605 LINCOLN AVE SW
LE MARS IA 51031

Appeal Number: 06A-UI-02697-CT
OC: 02/05/06 R: 12
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1)d – Separation Due to Illness/Injury

STATEMENT OF THE CASE:

Schuster Company filed an appeal from a representative's decision dated February 27, 2006, reference 01, which held that no disqualification would be imposed regarding Richard Taylor's separation from employment. After due notice was issued, a hearing was held by telephone on March 29, 2006. Mr. Taylor participated personally. The employer participated by Leon Hill, Director of Safety.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Taylor was employed by Schuster Company

from October 19, 2005 until February 4, 2006 as an over-the-road driver. He became separated from the employment when he failed a Department of Transportation (DOT) physical. Mr. Taylor is diabetic and failed the physical because of elevated blood sugar. As a result of not passing the physical, he could not remain in the employment.

At the time he failed the physical, Mr. Taylor was living in Texas. The employer did not have a local terminal where he might be able to perform other jobs. As of the date of the hearing herein, Mr. Taylor's blood sugar level was being reduced.

Mr. Taylor has received a total of \$2,359.00 in job insurance benefits since filing his claim effective February 5, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Taylor was separated from employment for any disqualifying reason. He became separated from Schuster Company because he did not pass the DOT physical and, therefore, could not work as a truck driver. It is concluded that he left the employment because of a medical condition that was not caused by the employment. The doctor's failure to certify Mr. Taylor to drive is, in essence, a medical recommendation that he not perform his job. It is concluded that he left the employment on the advice of a doctor within the intent of Iowa Code section 96.5(1)d.

In order to receive job insurance benefits pursuant to section 96.5(1)d, Mr. Taylor has to recover from his condition and re-offer his services to the employer. His elevated blood sugar is not a permanent condition. Because his blood sugar level is reducing, it appears that he will be able to return to driving at some future point. There was no evidence that he is permanently barred from driving because of risks to his health. For the reasons stated herein, it is concluded that Mr. Taylor is not entitled to job insurance benefits until such time as he recovers from his condition and re-offers his services to the employer.

Mr. Taylor has received job insurance benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated February 27, 2006, reference 01, is hereby reversed. Mr. Taylor left his employment for medical reasons but has not satisfied the requirements of Iowa Code section 96.5(1)d. Benefits are withheld until such time as he returns and re-offers his services to the employer or has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Taylor has been overpaid \$2,359.00 in job insurance benefits.

cfc/tjc