

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL M NIBERT
Claimant

APPEAL NO. 09A-UI-02798-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITHWAY MOTOR XPRESS INC
Employer

**Original Claim: 01/25/09
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 19, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 17, 2009. Claimant participated. Employer failed to respond to the hearing notice and did not participate. Exhibit One was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant last worked for employer on December 1, 2008. Claimant quit because his neck was hurting. Claimant was not advised by his doctor to quit. Claimant did not have a work restriction. Claimant did not inform the employer he was quitting because of injury. The neck problem was not work-related. Claimant did return to work to ask for his job back after he was feeling better. Claimant was denied rehire due to driving citations on his record that inhibited his work as a truck driver.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of a neck injury. Claimant did not keep the employer informed of the reason and need to be off work. Claimant did return to ask for his job back but was not qualified to work for reasons not related to the medical problem. This is not a quit for cause attributable to employer. Claimant did not keep the employer informed of the reason for the leave of absence. Furthermore, claimant, even after recovery, was not eligible for rehire due to other non-medical reasons. Benefits withheld.

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.

DECISION:

The decision of the representative dated February 19, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw