

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GREGORY RUTLEDGE

Claimant

APPEAL NO. 14A-UI-02306-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 01/05/14

Claimant: Respondent (2)

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Heartland Express Inc. of Iowa (employer) appealed an unemployment insurance decision dated February 19, 2014, (reference 01), which held that Gregory Rutledge (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 25, 2014. The claimant participated in the hearing. The employer participated through Dave Dalmasso, Human Resources Representative and Scott Adams, Terminal Manager.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time over-the-road truck driver and was employed from May 16, 2012, through November 16, 2013, when he effectively quit by failing to contact the employer and/or provide medical documentation for his non-work-related medical leave of absence. He went off work on September 29, 2013, after he broke his ankle. The claimant notified his employer but never provided medical documentation substantiating his need to be off work.

The employer sent the claimant a certified letter to his post office box on October 3, 2013, with the Family Medical Leave Act paperwork with a completion deadline of October 23, 2013. The claimant failed to return the medical certification and the employer sent him more paperwork in another certified letter on October 24, 2013, extending the deadline to November 12, 2013. Human Resources Representative Dave Dalmasso repeatedly tried to contact the claimant without success since his contact number did not work. He was considered to have voluntarily resigned effective November 16, 2013, and the employer sent the claimant a termination letter

that same day. All three letters were returned after they were not retrieved from the claimant's post office box.

The claimant finally contacted the employer on December 30, 2013, after he was medically released to return to work on December 28, 2013, and the employer was willing to place him back in a driving position. The claimant attended an orientation class on January 8, 2014, but failed to pass the road test so was unable to work as a driver.

The claimant filed a claim for unemployment insurance benefits effective January 5, 2014, and has received benefits after the separation from employment in the amount of \$4,488.00. Human Resources Representative Dave Dalmasso participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to initially provide medical documentation showing the need for his medical absence, by failing to maintain contact with the employer while he was absent and by failing to provide the medical certification necessary to qualify for leave under the Family Medical Leave Act. He contends he never received medical documentation which is true but only because he refused to retrieve it from the post office after notice was placed in his post office box.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

In the alternative, the separation could also be characterized as a discharge for excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer. 871 IAC 24.32(7). The claimant's absences were due to illness but were not properly reported since he failed to maintain contact with the employer for almost three months. Consequently, the outcome would be the same since his separation could be considered disqualifying misconduct.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, a waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount of \$4,488.00.

DECISION:

The unemployment insurance decision dated February 19, 2014, (reference 01), is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$4,488.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs