

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

GREGORY ACOSTA
1504 WOOD ST
WILKINSBURG PA 15221

HEARTLAND EXPRESS INC OF IOWA
2777 HEARTLAND DR
CORALVILLE IA 52241

Appeal Number: 04A-UI-06497-RT
OC: 05-16-04 R: 12
Claimant: Appellant (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 – Voluntary Quitting
Section 96.5-2-a – Discharge for Misconduct
Section 96.4-3 - Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Gregory Acosta, filed a timely appeal from an unemployment insurance decision dated June 4, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on July 8, 2004 with the claimant participating. Lea Kahrs, Human Resources Assistant, participated in the hearing for the employer, Heartland Express Inc. of Iowa. Employer's Exhibits 1 and 2 and Claimant's Exhibit A were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits 1 and 2 and Claimant's Exhibit A, the administrative law judge finds: The claimant was employed by the employer as a full-time over-the-road truck driver from March 21, 1994 until he was separated from his employment on or about March 11, 2004. On or about February 23, 2004, the claimant had heart problems requiring open-heart surgery. The claimant was not able to work for some time thereafter. The employer was aware of the claimant's heart problems. The claimant was supposed to file FMLA papers for his medical leave. The employer sent the claimant a letter dated March 11, 2004 and received by the claimant as noted by the return receipt signed by his wife on March 16, 2004, as shown at Employer's Exhibit 1. This letter asked the claimant to immediately provide, among other documents, a certification of healthcare provider. The letter also indicates that this form must be received by the employer by March 26, 2004. On March 26, 2004, the claimant called and spoke to the employer's witness, Lea Kahrs, Human Resources Assistant, who told the claimant that she needed that physician certification form. The claimant said he would take it in right away and get it faxed to the employer. The claimant spoke to Mr. McGlaughlin, Director of Human Resources, on April 15, 2004. Mr. McGlaughlin again reminded the claimant that he needed the physician certification returned and, if it was not returned, he would not get his FMLA leave. The claimant said he would see the physician right away and get it faxed to the employer. The employer did not receive the physician certification until April 26, 2004, way beyond the deadline and beyond when the claimant's FMLA leave would have expired had he properly applied for it.

The employer then sent a second letter dated April 19, 2004, as shown at Employer's Exhibit 2, which letter was received by the claimant on April 26, 2004, as shown by the return receipt which is part of Employer's Exhibit 2. The employer informed the claimant that his leave had not been approved and that he was off work and once he had received a full medical release he might be considered for rehire. The claimant was released by his physician to return to work on May 3, 2004, as shown by the physician's release at Claimant's Exhibit A. The claimant contacted Ms. Kahrs the next day inquiring about going back to work. Ms. Kahrs referred the claimant to recruiting and indicated that he would have to go through recruiting. The claimant contacted recruiting and attempted to return to work through several contacts with recruiting but eventually was told that he was not going to be put back to work. Since being released by his physician, the claimant has placed no restrictions on his ability to work or his availability for work, and he has been earnestly and actively seeking work by making at least two in-person contacts each week. The employer had no difficulties or problems with the claimant's driving while employed by the employer.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because he is and was at material times hereto not able and available for work. The claimant is not ineligible from and after May 3, 2004.

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 Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a, (7) provide:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(7) 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.

The first issue to be resolved is the character of the separation. The claimant maintains that he was discharged when he was released by his physician to return to work and the employer did not hire him. The employer maintains that the claimant voluntarily quit by failing to properly file FMLA papers. The administrative law judge concludes that, in this case, it really does not make any difference how the separation is characterized but the administrative law judge believes that what really occurred here was a voluntary quit. The claimant had a serious heart problem requiring open-heart surgery. No one questions the claimant's illness or his surgery. The claimant's last day of work was February 23, 2004. The employer anticipated that the claimant would take FMLA leave and forwarded forms to him to use but the claimant never promptly and timely returned the forms even though he received the letters from the employer, as shown at Employer's Exhibits 1 and 2, and promised the employer that he would send in the required documents, namely a physician's certification. The claimant testified that it was late because he did not feel it was needed. However, the letters make it clear that the documents were needed. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily on or about March 11, 2004. The administrative law judge further concludes that the claimant left his employment because of his heart surgery and was unable to work upon the advice of his physician. The employer was aware of the necessity for the claimant's inability to work and was notified of this, and the employer consented to the claimant's absence. After recovering from the illness and surgery, on or about May 3, 2004, as shown by Claimant's Exhibit A, the claimant returned to the employer and offered to perform services and the claimant's regular work or comparable suitable work was not available. Accordingly, the administrative law judge concludes that, although the claimant left his employment voluntarily because it was for illness and he returned immediately upon being released by his physician. Consequently, the administrative law judge concludes that the claimant is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided he is otherwise eligible.

Even should the claimant's separation be considered a discharge and the discharge occurred on or about May 4, 2004, the administrative law judge would conclude that the discharge was not based on disqualifying misconduct on the part of the claimant. The claimant was out of work because of a heart condition and open-heart surgery of which the employer was well aware. The administrative law judge would conclude that these absences were for reasonable cause and properly reported and not excessive unexcused absenteeism. There is no other evidence of any disqualifying misconduct on the part of the claimant. The administrative law judge would conclude that claimant's failure to timely file FMLA papers is not disqualifying misconduct. Accordingly, even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged but not for disqualifying misconduct and would still not be disqualified to receive unemployment insurance benefits.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant has the burden of proof to show that he is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead vs. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that, from and after May 3, 2004, he was able, available, and earnestly and actively seeking work. The claimant credibly testified that on May 3, 2004 he was released by his physician to return to work and this is supported by a physician's statement at Claimant's Exhibit A. The claimant testified that thereafter he placed no restrictions on his ability or availability for work and was making an earnest and active search for work by making at least two in-person contacts each week. Accordingly, the administrative law judge concludes that as of May 3, 2004, or for benefit week ending May 8, 2004 and continuing thereafter, the claimant was able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits. The claimant did not file for unemployment insurance benefits until an effective date of May 16, 2004. Accordingly, the administrative law judge concludes that the claimant is entitled to receive unemployment insurance benefits from and after benefit week ending May 22, 2004 so long as he remains otherwise eligible.

DECISION:

The representative's decision of June 4, 2004, reference 01, is reversed. The claimant, Gregory Acosta, is entitled to receive unemployment insurance benefits beginning with benefit week ending May 22, 2004 and continuing thereafter, provided he is otherwise eligible, because he left work voluntarily because of health problems. When he was released from his physician, the employer did not return the claimant to work. This voluntary quit is therefore not disqualifying. The claimant is able, available, and earnestly and actively seeking work from and after benefit week ending May 22, 2004.

tjc/b