

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

JAMES FUNCHES

Claimant,

and

HEARTLAND EXPRESS INC OF IOWA

Employer.

:
:
:
:
:
:
:
:

HEARING NUMBER: 09B-UI-01906

EMPLOYMENT APPEAL BOARD
DECISION

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

STATEMENT OF THE CASE:

The issue of timeliness was raised when the claimant filed an appeal by facsimile on March 19, 2009, two days beyond the statutory deadline of March 17, 2009. The reason for the delay was because the claimant never received the Notice of Decision. For this reason, the Board finds good cause has been established for the late appeal, and the board shall consider it to be timely.

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board

REVERSES as set forth below.

FINDINGS OF FACT:

The claimant, James Funches, worked for Heartland Express Inc. of Iowa from December 14, 2005 through December 19, 2008 as a full-time over-the-road truck driver. (Tr. 3-4, 7)

On November 13, 2008, the claimant experienced back pain which prompted him to tell the employer that he couldn't perform driver unload. (Tr. 4, 7) The employer released him from work directing that "[he] cannot continue driving until [he] take[s] care of [his] back issue..." (Tr. 7) The employer placed him on medical leave so that he could seek medical attention to resolve the matter. (Tr. 4) Mr. Funches spoke with Alicia Smith (Human Resources Representative) who explained FMLA procedures and issued paperwork to him on the same day, November 21, 2008. (Tr. 4, 5, 6, 8) The employer gave him a deadline of December 4th to complete and return the paperwork. (Tr. 4-5)

The claimant also inquired about short term disability to which Ms. Smith transferred the call to 'Kim' who took down all the claimant's information, which included his temporary address in New Jersey that was closer to where his doctor was located. (Tr. 8-9, 10, 11) Mr. Funches did not know that he had been transferred out of the Human Resources department. When he received the short-term disability papers, he signed them and sent them in, using his permanent address. (Tr. 9)

The claimant contacted 'Kim' nearly twice a week about his short-term disability. (Tr. 9-10) But he never received any FMLA paperwork from the employer. (Tr. 10) When the employer neither heard nor received any paperwork from Mr. Funches, the employer extended the deadline to December 18th. But when December 19th arrived and the claimant had not responded, the employer issued a termination letter. (Tr. 5, 6) n

Mr. Funches' doctor faxed the employer a medical release to return to work as instructed sometime in January. (Tr. 10, 12) The employer did not allow the claimant to return, as he failed to submit the necessary paperwork by December 18th, 2008.

REASONING AND CONCLUSIONS OF LAW:

Did the claimant quit?

Iowa Code section 96.5(1) (2007) provides:

An individual shall be disqualified for benefits: *Voluntary Quitting*. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employer no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5...

“[Q]uitting requires an intention to terminate employment accompanied by an overt act carrying out the intent.” FDL Foods, Inc. v. Employment Appeal Board, 460 N.W.2d 885, 887 (Iowa App. 1990), accord Peck v. Employment Appeal Board, 492 N.W.2d 438 (Iowa App. 1992).

The record establishes that Mr. Funches' intended to maintain his employment after the employer released him from work. The claimant complied with the employer's instructions to request FMLA paperwork by contacting the appropriate personnel, Alicia Smith. The claimant provided a plausible explanation as to why he failed to return the requested documentation. The confusion arose from when he provided a temporary address to the short-term disability personnel (Kim) and his continuing to preserve his permanent address on file with the Human Resources Department. Unbeknownst to Mr. Funches, however, his temporary address was not recorded in the employer's record. Thus, his FMLA paperwork went to his permanent address where he was *not* dwelling at that time, corroborating his testimony he never received them.

Had the claimant received the FMLA paperwork, we can reasonably assume he would have completed and returned them based on his return of the short-term disability papers he received and returned (from the temporary address) with his signature on December 3rd. Not only does Mr. Funches deny he intended to quit (Tr. 11), his behavior corroborates that lack of intention when he returned to his employer with medical documentation and a release to return to work, albeit, untimely.

Was the claimant discharged?

871 IAC 24.1(113)" c" provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

871 IAC 24.32(4) provides:

Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification.

If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established...

When the employer issued a termination letter on December 19th, it was the employer who severed the employment relationship. Such a separation is considered a discharge for which misconduct must be established. Based on the facts presented, the employer terminated Mr. Funches for failing to, essentially, timely comply with FMLA procedures. It is clear from this record that Mr. Funches' failure was not intentional, as he complied with other instructions (submission of short-term disability statement)

for which he believed in good faith were from the employer. The burden is on the employer to establish that the claimant committed job-related misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Based on these facts, we conclude that the employer failed to satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated March 2, 2009 is **REVERSED**. The claimant was discharged for no disqualifying reason. Accordingly, he is allowed benefits provided he is otherwise eligible.

John A. Peno

Elizabeth L. Seiser

AMG/ss

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester

AMG/ss