

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

RONALD L WARTLUFT
Claimant

APPEAL NO. 18A-UI-08804-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAY TRANSPORTATION INC
Employer

OC: 07/29/18
Claimant: Respondent (5R)

Iowa Administrative Code rule 871-24.1(113) – Other Separations

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 15, 2018, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on May 9, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on September 7, 2018. Claimant Ronald Wartluft did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate in the hearing. Darrin Gray represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant. The administrative law judge took official notice of the documents submitted for and generated in connection with the August 14, 2018 fact-finding interview.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies the claimant for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ronald Wartluft was employed by Gray Transportation, Inc. as a full-time over-the-road commercial truck driver from 2016 and last performed work for the employer on May 9, 2018. On May 9, Mr. Wartluft called the employer dispatchers from a customer location in Wisconsin to advise that he was not feeling well. The dispatcher noted that Mr. Wartluft had a hard time speaking. Mr. Wartluft in fact suffered a stroke while performing his work duties at a customer location in Wisconsin. The employer's dispatcher contacted the customer. The customer went to Mr. Wartluft's semi and found him in need of medical treatment. The employer learned later that day that Mr. Wartluft had suffered a stroke. Mr. Wartluft was hospitalized for three days. The employer made arrangements to get Mr. Wartluft home and to retrieve the employer's truck. The employer and Mr. Wartluft were mutually aware that the stroke meant that Mr. Wartluft would be disqualified under Federal Motor Carrier Safety Administration (FMCSA) rules from

operating a commercial truck for 12 months. The doctor who treated Mr. Wartluft for the stroke had conveyed this information to Mr. Wartluft. Mr. Wartluft had given no previous indication of an intent to separate from the employment and did not desire to separate from the employment in connection with the stroke. After Mr. Wartluft was discharged from the hospital, Mr. Wartluft's mother brought him to the workplace so that he could collect his personal effects. The employer had no other work for Mr. Wartluft. Mr. Wartluft advised the employer that he hoped to return at the end of the 12-month FMCSA disqualification period. The employer terminated Mr. Wartluft from the employer's payroll system for bookkeeping purposes, but remained open to Mr. Wartluft returning to the employment following the 12-month FMCSA disqualification period.

Mr. Wartluft established a claim for unemployment insurance benefits that was effective July 29, 2018. Gray Transportation, Inc. is the sole base period employer for purposes of the claim.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113), provides as follows:

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

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. 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.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The evidence in the record establishes that Mr. Wartluft neither voluntarily quit nor was discharged from the employment by the employer. The evidence establishes that Mr. Wartluft's involuntary separation from the employment based solely on Mr. Wartluft's inability to meet the physical standards to perform the work in light of the stroke and in light of the FMCSA rules. Mr. Wartluft's separation from the employment falls into that category known as "other separations." Because Mr. Wartluft neither voluntarily quit nor was discharged for misconduct in connection with the employment, the separation from the employment neither disqualifies him for unemployment insurance benefits nor relieves the employer's account of liability for benefits. Contrast Iowa Code section 96.5(1) (regarding voluntary quits) and 96.5(2)(a) (regarding discharges for misconduct in connection with the employment). Mr. Wartluft is eligible for

benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

This matter will be remanded to the Benefits Bureau for entry of a decision regarding whether Mr. Wartluft has been able to work and available for work within the meaning of the law since he established his unemployment insurance claim.

DECISION:

The August 15, 2018, reference 01, decision is modified as follows. The claimant neither voluntarily quit nor was discharged for misconduct in connection with employment. The claimant's May 9, 2018 separation from the employment falls within the category known as "other separations" and was due solely to his inability to meet the physical standards of the employment. The separation from the employment neither disqualifies the claimant for unemployment insurance benefits nor relieves the employer's account of liability for benefits. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

This matter is remanded to the Benefits Bureau for entry of a decision regarding whether the claimant has been able to work and available for work within the meaning of the law since he established his unemployment insurance claim.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs