

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN T O'GRADY
Claimant

APPEAL NO. 13A-UI-10779-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS OF IOWA
Employer

**OC: 08/25/13
Claimant: Respondent (1)**

Section 96.5-1-d – Voluntarily Quit
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 16, 2013, reference 01, that concluded the claimant offered to return to work after recovering from an illness or injury but no work was available. A telephone hearing was held on October 16, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Gary King participated in the hearing on behalf of the employer.

ISSUES:

Is the claimant eligible because he offered to return to work after recovering from an illness or injury but no work was available?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked as an over-the-road truck driver for the employer from September 16, 2011, to December 24, 2012.

The claimant was hospitalized in late December 2012 due to what was first diagnosed as a heart attack. He was off work for medical reasons on leave under the Family and Medical Leave Act (FMLA) and was referred to a cardiologist who had the claimant undergo testing to determine whether he had heart disease.

The employer terminated the claimant's employment when he was unable to return to work after his 12 weeks of FMLA and 2 weeks of extended leave expired.

In July 2013, the cardiologist released the claimant to return to work without restrictions. The cardiologist did not find that the claimant had heart disease or a heart attack. The claimant contacted the new hire manager, Scott Lee, and offered to return to work for the employer and supplied a doctor's release without restrictions. Lee advised him that the new hire committee would have to decide if he could be rehired. The claimant was later advised that he would not be rehired but was not told the reason.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). The evidence does not show the claimant had any intention to quit his employment. Instead, the employer terminated the claimant when he was unable to work after the expiration of his leave. A discharge due to inability to perform a job is not for misconduct under the unemployment rules. See 871 IAC 24.32(1) (definition of misconduct).

Even if the claimant's failure to return to work at the expiration of his leave could be considered a voluntary quit, the claimant would not be disqualified.

The unemployment insurance law provides that individual is qualified to receive benefits if he: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that he needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but his regular work or comparable suitable work was not available. Iowa Code § 96.5-1-d.

The claimant offered to return to work after being released to return to work without restrictions but no work was available for him. The employer suggested this was because the claimant did not have an up-to-date physical or medical card. The problem with this argument is that the claimant was never told that this was the reason his application was rejected so he could address the issue. The claimant is qualified to receive unemployment insurance benefits based on the reasons for his separation from work.

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The claimant was released to return to work without restrictions when he filed for unemployment insurance benefits. He was and is able to and available for work.

DECISION:

The unemployment insurance decision dated September 16, 2013, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs