

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL T DANT
Claimant

APPEAL NO. 17A-UI-08407-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 07/30/17
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.5(1) - Layoff

STATEMENT OF THE CASE:

Michael Dant filed a timely appeal from the August 11, 2017, reference 01, decision that denied benefits effective July 30, 2017, based on the claims deputy's conclusion that Mr. Dant requested and was granted a leave of absence and, therefore, could not be deemed available for work. After due notice was issued, a hearing was held on September 5, 2017. Mr. Dant participated. Lea Peters represented the employer. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant (DBRO). The parties waived formal notice on the question of whether the claimant had been discharged for misconduct in connection with employment, had been laid off, or had voluntarily quit.

ISSUES:

Whether Mr. Dant has been able to work and available for work since establishing his claim for benefits.

Whether Mr. Dant has been on an approved leave of absence since he established his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Dant commenced his full-time employment with Heartland Express, Inc. of Iowa in 2005 and last performed work for the employer on May 6, 2017. Mr. Dant worked for the employer as a full-time over-the-road commercial truck driver. Mr. Dant is assigned to the employer's terminal in Atlanta, Georgia. Mr. Dant's immediate supervisor is Driver Manager Tracey Ashley. On May 5, 2017, Mr. Dant suffered a "cardio vascular accident" or CVA, commonly known as a stroke, at time when he was Tennessee as part of his work duties. On that day, Mr. Dant recognized that he was experiencing an acute health issue and sought evaluation at an emergency room. Mr. Dant was admitted to the hospital. Mr. Dant was discharged from the hospital on May 8, 2017, with instructions to seek follow up evaluation and treatment with an ophthalmologist when he returned to his home in Florida. The employer made arrangements to

collect Mr. Dant's assigned truck and to transport Mr. Dant home. The employer had Mr. Dant remove his belongings from the truck in anticipation of what might be an extended period away from work. Neither the employer nor Mr. Dant ended the employment at that time.

On May 23, 2017, Mr. Dant spoke with Lea Peters regarding his need to continue off work for medical reasons. Ms. Peters sent Mr. Dant Family and Medical Leave Act (FMLA) materials to be completed by Mr. Dant and his doctor. While Mr. Dant did not specifically state that he needed a medical leave of absence, the parties mutually understood that Mr. Dant was unable to return to work at that time and that neither intended to sever the employment at that time. Mr. Dant had not yet been seen by an ophthalmologist.

On June 26, 2017, Mr. Dant met with his primary care provider, a nurse practitioner, and the provider referred him to a cardiologist. On July 3, 2017, the employer finally received the FMLA certification of the primary care provider. On the certification form, the provider indicated a CVA diagnosis effective May 8, 2017 and indicated that Mr. Dant would need to be cleared by an ophthalmologist before he could return to work. The primary care provider indicated that it was unknown at that time whether Mr. Dant was able to perform his work duties. On July 7, 2017, Mr. Dant had his first appointment with the cardiologist, Dr. Werbel, of The Cardiac and Vascular Institute. On that same day, Mr. Dant faxed to the employer a note from Dr. Werbel indicating that Mr. Dant could return to work without restrictions. At some point, Mr. Dant was examined by an ophthalmologist. The ophthalmologist found nothing wrong with his eyes.

Despite the note from the cardiologist indicating that Mr. Dant could return to work without restrictions, the employer did not allow Mr. Dant to return to work at that time. On July 18, Ms. Peters spoke with the employer's Safety Director, Don McLaughlin regarding Mr. Dant and Mr. McLaughlin decided that Mr. Dant would not be allowed to return to work until he underwent a new Department of Transportation approved physical and produced a letter from that doctor indicating that the doctor was aware of CVA and was releasing Mr. Dant to return to the safety-sensitive commercial driving duties. Mr. Dant underwent the required physical. On July 27, 2017, the employer received the D.O.T physical report that released Mr. Dant to return to work. However, the employer did not receive the letter that the employer had decided to impose as an additional impediment to Mr. Dant returning to work.

On July 27, 2017, Mr. McLaughlin spoke with Mr. Dant and told him that he would not be allowed to return to work until he was evaluated by a neurologist and the neurologist provided a letter indicating awareness that Mr. Dant was a commercial motor vehicle driver and was released to return to those duties. Mr. Dant desired to return to the employment. Mr. Dant consulted a neurologist and underwent testing. Mr. Dant is to meet with the neurologist on September 20, 2017 to discuss the results on the testing.

Mr. Dant established a claim for unemployment insurance benefits that was effective July 30, 2017. At the time Mr. Dant established his claim, he received instructions from Iowa Workforce Development indicating that he had to make weekly claims in order to receive unemployment insurance benefits. Mr. Dant has not made any weekly unemployment insurance claims. The August 11, 2017, reference 01, decision from which Mr. Dant appeals in this matter also told Mr. Dant that he should continue to make weekly claims and would only receive benefits for the weeks in which he filed a valid claim. The appeal hearing notice mailed to Mr. Dant on August 21, 2017 contained the same instruction. Mr. Dant has not looked for other employment and hopes to return to employment with Heartland Express Inc. of Iowa subsequent to the September 20, 2017 neurology appointment.

REASONING AND CONCLUSIONS OF LAW:

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".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.22(2)(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The weight of the evidence in the record establishes that Mr. Dant has been physically and mentally able to return to work, and available to return to work with this employer since he established the unemployment insurance claim that was effective July 30, 2017. The weight of the evidence in the record establishes that Mr. Dant was indeed on an approved leave of absence, that he requested and that the employer approved, for the period of May 5, 2017 until July 7, 2017, when he provided the employer with a note from the cardiologist indicating that he was released to return to work without restrictions. Mr. Dant was medically able to return to work at that time and was available to return to work at that time. The employer declined to allow Mr. Dant to return to work at that time. If there was any question as to whether Mr. Dant was medically able to return to work as a commercial truck driver, that issue was resolved by July 27, 2017, when the physician who conducted the D.O.T. approved physically provided the employer with a report indicating that Mr. Dant was released to return to work. Despite that report, the employer elected to impose an additional impediment that Mr. Dant consult with a neurologist and produce a document from the neurologist spelling out that the neurologist was aware of Mr. Dant's commercial motor vehicle duties and was releasing him to return to work. That requirement was superfluous and redundant in light of the D.O.T. physical report the employer received on July 27, 2017. The

Because the employer failed to return Mr. Dant to the employment effective July 7, 2017, Mr. Dant was at that point, pursuant to the Administrative Code rule, laid off. A layoff would not disqualify Mr. Dant for unemployment insurance benefits or relieve the employer's account of liability for benefits. Contrast Iowa Code section 96.5(1) (regarding voluntary quit) and 96.5(2)(a) (regarding discharges). The weight of the evidence also indicates that Mr. Dant reasonably concluded, based on his discussions with the employer, that he remained "attached" to the employment. For that reason, that administrative law judge concludes there has been good cause up to this point for Mr. Dant's failure to seek other employment.

Iowa Administrative Code section 871 IAC 24.2(1)(e) and (g) provide as follows:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

24.2(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's account at a financial institution or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

The department retains the ultimate authority to choose the method of reporting and payment.

g. No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

An individual claiming benefits using the weekly voice continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

The individual shall set forth the following:

- (1) That the individual continues the claim for benefits;
- (2) That except as otherwise indicated, during the period covered by the claim the individual was unemployed, earned no wages and received no benefits, was able to work and available for work;
- (3) That the individual indicates the number of employers contacted for work;
- (4) That the individual knows the law provides penalties for false statements in connection with the claim;
- (5) That the individual has reported any job offer received during the period covered by the claim;
- (6) Other information required by the department.

Because Mr. Dant has not make any weekly claims up to this point, he has not met a critical requirement of the availability requirement under Iowa Code section 96.4(3) and, for that reason, is not eligible for benefits for the period beginning July 30, 2017. The ineligibility continues as of the entry date of this decision and will continue until Mr. Dant commences making the required weekly claims. The claimant must meet all other eligibility requirements.

DECISION:

The August 11, 2017, reference 01, decision is modified as follows. The claimant has not been on a leave of absence since he established his claim for benefits. The leave of absence ended prior to the unemployment insurance claim. The claimant was job attached, but laid off effective

July 7, 2017 and would be eligible for unemployment insurance benefits if he met all other eligibility requirements. The employer's account is not relieved of liability for benefits. The claimant has been able to work since he established his claim for benefits. The claimant has been available for work in all respects, but one since he filed his claim for benefits. Because the claimant has not made weekly claims, he has not satisfied the availability claim since he established his unemployment insurance claim. Accordingly, the claimant is not eligible for the benefits effective July 30, 2017. The ineligibility continues as of the entry date of this decision and will continue until the claimant commences making the required weekly claims. The claimant must meet all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs