

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM H BARNHILL
Claimant

APPEAL NO. 09A-UI-05823-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

J B HUNT TRANSPORT INC
Employer

OC: 03/15/09
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

William Barnhill filed a timely appeal from the April 6, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on May 11, 2009. Mr. Barnhill participated. The employer provided written notice prior to the hearing that it elected not to participate in the appeal proceedings. Exhibits A through F were received into evidence.

ISSUE:

Whether the claimant separated from the employment for a reason that makes him ineligible for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: William Barnhill was employed by J.B. Hunt Transport as a full-time over-the-road truck driver from September 24, 2008 until March 14, 2009. Mr. Barnhill was assigned to the Southeastern region that included North Carolina, South Carolina, Georgia, Florida, and Tennessee. Mr. Barnhill's immediate supervisor during the final couple months of the employment was Fleet Manager Michael Simmons. Mr. Simmons was stationed in Arkansas.

Mr. Barnhill suffers from diabetes and hypertension. Mr. Barnhill must take prescription medications for both conditions. Neither pill medication prevents him from being able to operate a semi tractor-trailer. Mr. Barnhill's doctor has indicated that Mr. Barnhill must eat at regular intervals due to his diabetes and the need to regulate his blood sugar. When Mr. Barnhill is on the road for the employer, he is away from home for three weeks at a time. Mr. Barnhill must pack the food he needs for that period and load it in the truck at the beginning of each three-week run.

Mr. Simmons and Mr. Barnhill were at odds with one another from the time that Mr. Simmons became Mr. Barnhill's supervisor. Mr. Simmons routinely threatened to discharge Mr. Barnhill from the employment. Mr. Barnhill sought remedy from the safety department and the human resources department, but his requests for assistance were routed back to Mr. Simmons. Mr. Simmons was unsympathetic to Mr. Barnhill's need to stay on top of his medical diagnoses.

Mr. Simmons repeatedly scheduled loads for Mr. Barnhill that prevented Mr. Barnhill from making scheduled doctor's appointments or prevented Mr. Barnhill from receiving appropriate rest periods between extended runs in the truck. Mr. Barnhill was concerned that failure to stay on top of his medical condition would place him and the general public at risk if he operated the truck in a medically impaired condition.

Mr. Barnhill last hauled for the employer on February 14, 2009. Mr. Barnhill was scheduled to be home on February 14. Instead of scheduling a load that would get Mr. Barnhill home to Greenville, North Carolina, Mr. Simmons assigned Mr. Barnhill to deliver a load and then sit for two and a half days at an isolated site with no restroom or shower facilities. Mr. Barnhill was not feeling well and knew he needed to get home to see his doctor. Mr. Barnhill notified the employer that he was leaving the truck and going home to his doctor. Mr. Barnhill secured a ride home from his nephew. Mr. Barnhill got home in the early morning hours of Sunday, February 15. Mr. Barnhill passed out at home that day.

On Monday February 16, Mr. Barnhill saw his doctor. The doctor told Mr. Barnhill that his blood pressure was elevated. Mr. Barnhill discussed with his doctor the stress he had been under trying to negotiate with Mr. Simmons for time to address his health concerns and as a result of the interpersonal conflict between the two men. The doctor advised Mr. Barnhill to consider other employment before he had a stroke or a heart attack. The doctor instructed Mr. Barnhill to take a couple weeks off work to get his blood pressure down.

On February 16, Mr. Barnhill faxed medical documentation of his need for time off to Mr. Simmons. Mr. Simmons was off work and so Mr. Barnhill spoke with another person, Russell Simmons, about his need for time off. Russell Simmons asked when Mr. Barnhill would be returning to the employment. Mr. Barnhill indicated that his return date would be up to his doctor.

Mr. Barnhill continued off work into March. At the beginning of March, Mr. Barnhill notified Michael Simmons that he needed to appear for a court proceeding on March 9. Mr. Barnhill was being sued in small claims court. Mr. Simmons told Mr. Barnhill to give him a call after the court date so they could make arrangements to get him back in the truck and on the road. On March 9, Mr. Barnhill learned that the court was postponing the small claims proceeding to March 13. Mr. Simmons directed Mr. Barnhill to report to Atlanta on March 13 to be "recertified" and to get his truck. On March 11, when Mr. Barnhill explained that he could not report to Atlanta because of the court proceeding, Mr. Simmons told Mr. Barnhill that the truck had been sitting too long and that he was going to process paperwork to terminate Mr. Barnhill's employment.

On March 14, Mr. Simmons notified Mr. Barnhill that he was going to give him one more chance. Mr. Simmons directed Mr. Barnhill to report to Atlanta by Monday, March 16. Mr. Simmons told Mr. Barnhill that he would need to be "recertified" to drive the employer's truck once he got to Atlanta. Mr. Barnhill had already been released by his doctor to return to work with no restriction other than eating on a regular basis while taking the diabetes medication. Mr. Barnhill wanted to continue in the employment, but lacked transportation from his home in Greenville, North Carolina to Atlanta, Georgia, some 500 miles away. Mr. Barnhill had purchased food for the extended run in the truck. Mr. Barnhill lacked a means to transport his food to Atlanta. Mr. Barnhill lacked money to purchase additional food once he got to Atlanta. Mr. Barnhill could not take a bus to Atlanta because of restrictions on the amount of baggage he could take on board. Mr. Barnhill requested that Mr. Simmons rent a car for him to drive to Atlanta. Mr. Barnhill was aware that the employer had rented cars for other drivers who lacked transportation. Mr. Simmons refused to rent a car for Mr. Barnhill. When Mr. Barnhill insisted

that he could not make it to Atlanta unless the employer rented a car for him, Mr. Simmons told Mr. Barnhill that he was going to process his termination papers.

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 weight of the evidence in the record indicates that Mr. Barnhill was discharged from the employment. The evidence indicates that Mr. Barnhill and his supervisor had an agreement as of March 14, 2009 that Mr. Barnhill would continue in the employment. The evidence indicates that the supervisor discharged Mr. Barnhill when Mr. Barnhill was unable to comply with a directive that he report to a workplace several hundred miles from his home. Mr. Barnhill's lack of transportation, lack of funds, and medical condition prevented him from being able to comply with the directive. In light of Mr. Barnhill's medical condition and the distance to the reporting site, the employer's directive was unreasonable.

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 provides:

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.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Barnhill was discharged for no disqualifying reason. Accordingly, Mr. Barnhill is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Barnhill.

DECISION:

The Agency representative's April 6, 2009, reference 02, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs