

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES FULGHUM

Claimant

APPEAL NO: 11A-UI-08522-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 05/22/11

Claimant: Appellant (1)

Iowa Code § 96.5-1-d - Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) - Separation Due to Illness or Injury

STATEMENT OF THE CASE:

James Fulghum (claimant) appealed an unemployment insurance decision dated June 20, 2011, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Heartland Express Inc. of Iowa (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 20, 2011. The claimant participated in the hearing. The employer participated through Lea Peters, Human Resources Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time regional driver from June 9, 2006 through December 30, 2010 when his physician took him off work due to multiple heart attacks. The employer contacted the claimant on March 23, 2011 and he reported that he was scheduled for double by-pass surgery on April 5, 2011. The employer sent the claimant a letter of that same date explaining that his 12 weeks of leave under the Family and Medical Leave Act expired on March 26, 2011. The employer gave the claimant the maximum extension of 15 days and his extended leave now expired on April 10, 2011. The claimant was advised to contact the employer at that point to review his status. The letter also informed him that the employer would need the full medical release when his physician returned him to work.

The claimant never contacted the employer on or near April 10, 2011. The employer called him on April 14, 2011 and the claimant said he could not yet have surgery because he had a blood clot. He reported that he had a follow up appointment with his physician on May 5, 2011. The

claimant never contacted the employer after that but his physician released him to return to work with no restrictions on June 21, 2011. He has not provided that release to the employer and has not contacted the employer to offer his services.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code §§ 96.5-1. The claimant left his employment on December 30, 2010 due to a non-work-related medical condition.

Iowa Code § 96.5-1-d provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant went on a medical leave of absence due to a non-work related illness. He would only be eligible for benefits if his position were not available to him after his recovery. A "recovery" under Iowa Code § 96.5-1-d means a complete recovery without restriction. White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992) (citing Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985)).

The claimant has recovered and received a release to return to work without restrictions as of June 21, 2011. However, he has not provided that release to the employer and has not returned to the employer to offer his services. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The unemployment insurance decision dated June 20, 2011, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs