IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CHRISTOPHER BURNES
Claimant

DECKER TRUCK LINE INC
Employer

APPEAL NO: 15A-UI-01605-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/11/15
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 28, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on April 21, 2015. The claimant participated in the hearing. Brenda McNealey, Vice-President of Human Resources and Andrea Kloverdanz, Health and Benefits Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road truck driver for Decker Truck Line from May 2, 2012 to June 25, 2014. He voluntarily left his employment to look for other work after his Family and Medical Leave (FML) was exhausted and he was released to return to work but declined to do so.

The claimant contracted pneumonia and went on FML December 27, 2013, and while on FML for that illness he had a heart procedure during which he received two stents. Consequently, he was on FML until February 5, 2014.

The claimant's DOT physical was scheduled to expire April 24, 2014. The claimant saw a physician just prior to that date and it was determined the claimant was not keeping his diabetes under control and was not compliant with his required C-Pap machine used nightly for sleep apnea. The doctor excused the claimant from work for 30 days so he could try to regain control of his diabetes and start wearing his C-Pap mask. The employer granted the claimant an additional 30 days of FML which was set to expire June 8, 2014. The claimant was to maintain regular contact with the employer but only called April 29 and May 8, 2014.

On June 9, 2014, Vice-President of Human Resources Brenda McNealy and Andrea Kloverdanz, Health and Benefits Manager, called the claimant to notify him that he had exhausted his FML the previous day and to ask if he was able to return to work. The claimant explained he had a doctor appointment the following day and thought he would be released to return to work at that time. The employer told the claimant it needed to complete the termination paperwork because he did not return to work upon the exhaustion of his FML but if he was released the next day he would be reinstated. The claimant did not contact the employer June 10, 2014, with the results of his doctor visit.

On June 17, 2014, the employer received notes from the claimant's treating physician stating he was certified to drive for three months and then would have to take the DOT physical again at that time to see if the permission to drive would be extended for a longer period of time. The employer called the claimant that day and informed him the doctor had certified him to return to full duty for three months and he needed to contact its recruiting office about returning to work for the employer.

On June 23, 2014, Ms. Kloverdanz spoke to the claimant about getting a new DOT physical. They discussed the fact that the claimant's C-Pap machine was old and that prevented the company that reads the machine to insure patients are compliant from reading the data on the machine. They agreed on setting a tentative date for the claimant's DOT physical in Fort Dodge of June 30, 2014. Ms. Kloverdanz also told the claimant the employer would attempt to schedule his drug screen closer to his home.

On June 25, 2014, the claimant called the employer and stated he did not want to return to work for the employer. He stated he was going to try to get a job at Casey's and drive a dump truck for a friend.

The claimant has claimed and received unemployment insurance benefits in the amount of $5,824.00 for the 14 weeks ending April 18, 2015.

The employer participated personally in the fact-finding interview through the statements of Vice-President of Human Resources Brenda McNealy and Health and Benefits Manager Andrea Kloverdanz.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code section 96.5(1) 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant

has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant was on FML until it expired June 8, 2014. The employer prepared the termination paperwork effective June 9, 2014, but when it called the claimant to ask him about his progress he indicated he had a doctor appointment June 10, 2014, and expected to be released at that time. The employer told the claimant he could be reinstated immediately if that were the case. The claimant failed to contact the employer until June 23 but on June 17, 2014, the employer received notes from the claimant's treating physician he could be DOT certified for three months and return to work. When the employer gave the claimant that information they agreed he would come to Fort Dodge June 30, 2014, have a drug test in the meantime at a location closer to the claimant's home, and be ready to return to work. On June 25, 2014, the claimant called the employer and stated he did not want to return to work and he was going to look at other employment opportunities.

While the employer told the claimant it put in his termination paperwork in June 9, 2014, it also told him he would be reinstated if he was released from his physician after his appointment June 10, 2014. The claimant was released to drive without restrictions at that time but did not notify the employer of that fact. Instead the employer had to contact the claimant June 23, 2014, about taking his official DOT physical and returning to work and the claimant agreed to do so but later decided he no longer wanted the job and notified the employer he was not returning to work.

The employer completed the termination paperwork after the claimant exhausted his FML June 8, 2014, but both parties continued talking about the claimant's return as a certainty beginning June 9, 2014. Their discussions continued June 17 and June 23, 2014, without the claimant stating he did not plan to return to work. The claimant failed to follow-up with the employer after his medical appointment June 10, 2014, when he was released to return to work without restriction and received a three-month certification to drive. The employer was expecting him to return to work until June 25, 2014, at which time the claimant informed the employer he was not returning to work and wanted to consider other employment opportunities. Under these circumstances, the administrative law judge concludes the claimant voluntarily quit his job without good cause attributable to the employer. Therefore, benefits must be denied.

871 IAC 24.10 provides:

> Employer and employer representative participation in fact-finding interviews.
>
> (1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the

claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview personally through the statements of Vice-President of Human Resources Brenda McNealy and Health and Benefits Manager Andrea Kloverdanz. Consequently, the claimant's overpayment of benefits cannot be waived and he is overpaid benefits in the amount of $5,824.00.

DECISION:

The January 28, 2015, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant's overpayment of benefits cannot be waived and he is overpaid benefits in the amount of $5,824.00.

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Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/css