

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL E HARRIS
Claimant

APPEAL NO. 14A-UI-06251-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHUSTER GRAIN CO INC
Employer

OC: 05/18/14
Claimant: Appellant (2-R)

871 IAC 24.1(113) – Other Separations

STATEMENT OF THE CASE:

Daniel Harris filed a timely appeal from the June 9, 2014, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was held on July 10, 2014. Mr. Harris participated. Erica Wenzel represented the employer and presented additional testimony through Keith Lamfers. Exhibits One and A were received into evidence.

ISSUE:

Whether Mr. Harris separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Daniel Harris was employed by Schuster Grain Company as a full-time over-the-road truck driver from April 2013 and last performed work for the employer on May 8, 2014. Mr. Harris is a diabetic. Mr. Harris's driving duties required a commercial driver's license and subjected him to U.S. Department of Transportation regulations. Those regulations indicated that Mr. Harris could not legally operate a commercial motor vehicle if he was dependent on injectable insulin unless he obtained a waiver of that requirement from the U.S. Department of Transportation. When Mr. Harris started the employment, he was not dependent on injectable insulin to treat his diabetes. When Mr. Harris started the employment he had a valid CDL and a valid D.O.T. medical certification. Mr. Harris underwent a D.O.T. physical shortly after starting the employment and was able to obtain the required D.O.T. medical certification. That medical certificate was set to expire on May 20, 2014.

In March or April 2014, Mr. Harris' doctor had put him on injectable insulin to treat his diabetes. This rendered Mr. Harris ineligible to operate a commercial motor vehicle in interstate commerce. Mr. Harris did not immediately disclose to the employer that he had been placed on injectable insulin. Mr. Harris disclosed the injectable insulin dependence to the physician who was to conduct the D.O.T. physical and the physician declined to provide Mr. Harris with a new medical certificate. Mr. Harris then disclosed both the insulin dependence and his inability to renew his medical certificate to the employer. The employer declined to have Mr. Harris

perform any additional driving unless Mr. Harris could get his doctor to take him off the injectable insulin. Mr. Harris' doctor declined to do that, citing the benefit to Mr. Harris' health.

The employer discussed with Mr. Harris the idea of having him take a medical leave of absence under the Family and Medical Leave Act to see whether Mr. Harris and his doctor could get Mr. Harris' blood sugar under control so that Mr. Harris could get off the injectable insulin. Mr. Harris did not wish to take a leave of absence. The employer terminated the employment on May 15, 2014.

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 evidence in the record establishes a separation from the employment that falls within the category known as "other separations." Mr. Harris' separation from the employment was involuntary. The separation from the employment was based solely on Mr. Harris' inability to meet the physical standards required to perform the commercial driving duties. Because the separation was involuntary and was not based on misconduct in connection with the employment, the separation does not disqualify Mr. Harris for unemployment insurance benefits. Contrast Iowa Code section 96.5(2)(a) (discharge for misconduct) and 96.5(1) (voluntary quit). Mr. Harris is eligible for benefits provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

This matter will be remanded to the Benefits Bureau for determination of whether Mr. Harris has been able to work and available for work since he established his claim for benefits.

DECISION:

The claims deputy's June 9, 2014, reference 01, decision is reversed. The claimant neither quit nor was discharged from the employment. The claimant's separation falls into the category of "other separations" and was due only to his inability to meet the physical requirements of the employment. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been able to work and available for work since he established his claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css