

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANA M ASHLEY
Claimant

APPEAL NO: 07A-UI-02457-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 01/28/07 R: 02
Claimant: Appellant (1)

Section 96.5-1-c – Voluntary Leaving

STATEMENT OF THE CASE:

Tana M. Ashley (claimant) appealed a representative's March 1, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Heartland Express, Inc. of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 27, 2007. The claimant participated in the hearing. Lea Kahrs appeared on the employer's behalf. 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:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on April 23, 2004. She worked full-time as an over-the-road truck driver in the employer's trucking business. Her last day of work was December 23, 2006. She was scheduled to return to work on January 3, 2007.

The claimant drove for the employer as part of a team with her husband. On December 29, 2006, the claimant contacted the employer and provided the employer with information that her husband's doctor had taken him off work indefinitely due to some blood pressure and irregular EKG readings. The claimant was informed that her husband, therefore, would qualify for a medical leave of absence pending his release by his doctor. The claimant then indicated that she did not intend to return to work until such time as her husband returned to work. Ms. Kahrs, the employer's human resources generalist, informed the claimant that with the information provided, the claimant did not qualify for a medical leave. There was no evidence provided that the claimant's husband's doctor had indicated that there was any care the claimant needed to be available and to provide to her husband.

Ms. Kahrs further advised the claimant that there was work available for the claimant to run some solo trips, and that if she did not return to work by January 6, 2007, she would be deemed to have left her employment. She further informed the claimant that if the claimant did not return by January 6 but did seek to return by January 22, she could be reinstated. After that date, if she sought to return it would be on the basis of a new application. The claimant responded that she did not intend to return to work while her husband was having any health issues.

The claimant did not seek to return to work by either January 6 or January 22. She entered into employment with a new employer for a period between January 15 and January 30, and left that employment, but did not seek reemployment with the employer. Her husband was not released by his doctor until February 28, 2007; however, she did not seek reemployment with the employer at that time because even though he had been released by his doctor, the claimant and her husband were still concerned about his health.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

Iowa Code § 96.5-1-c 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

871 IAC 24.25 provides that, 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 claimant did express her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2.

A voluntary quit can be for good cause attributable to the employer even if the employer is free from any negligence or wrongdoing. Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956); Shontz v. IESC, 248 N.W.2d 88 (Iowa 1976). Generally, in order for a quit to be "for necessary and sole purpose" of providing assistance to a family member with a medical condition, that necessity must be demonstrated to exist as the result of the "advice of a licensed and practicing physician." Iowa Code § 96.5-1-e. The claimant's quit, therefore, not "necessary" under the terms of the statute. Without being medically "necessary,"

while then being for compelling personal reasons, her absence was for more than ten days, which is a disqualifying reason for a quit. Iowa Code § 96.5-1-f. Further, the claimant must also demonstrate that she returned to work, but no work was available. She has not satisfied this burden. Benefits are denied.

DECISION:

The representative's March 1, 2007 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of December 29, 2006, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css