

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY FAHEY
Claimant

APPEAL NO: 13A-UI-04322-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

JS HELWIG & SON LLC
Employer

OC: 03/10/13
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(35) – Non-Job Related Illness or Injury
Section 96.4-3 – Able and Available
871 IAC 24.23(1) – Unable to Work/Illness
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated April 5, 2013, reference 02, that held claimant voluntarily quit employment with good cause after an employment separation due to illness on February 26, 2013, and benefits are allowed. A telephone hearing was scheduled and held on May 16, 2013. The claimant participated. Debbie Halligan, Safety Administrator, participated for the employer.

ISSUES:

The issue is whether claimant voluntarily quit with good cause attributable to the employer.

The issue is whether claimant is overpaid UI benefits.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time over-the-road driver from October 25, 2012 to February 25, 2013. He is required to have a Class A CDL with medical certificate in order to drive a commercial vehicle for the employer. The employer had claimant examined by a doctor and he was cleared to drive.

Claimant was hospitalized for congestive heart failure and high blood pressure (220/113) for February 26, 27 and 28. His doctor determined claimant was not medically qualified to drive due to high blood pressure and prescribed medication. The employer instructed claimant he could not return to driver work until he received an unrestricted medical release.

Sometime before claimant filed his UI claim effective March 10, he went into the employer and talked with a mechanic who stated he could pick up his personal belongings as his truck had been put back in service with another driver. Claimant assumed he had been terminated. The employer still considers claimant an employee pending an unrestricted return to work medical release.

Claimant has been receiving UI benefits on his current claim.

REASONING AND CONCLUSIONS OF LAW:

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.

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 section 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 section 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.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements

of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (1) An individual who is ill and presently not able to perform work due to illness.

The administrative law judge concludes that the claimant voluntarily left employment without good cause attributable to the employer on February 26, 2013 due to a non-job related illness (health condition). Since he has not received an unrestricted medical release to return to work he does not meet the availability requirements of the law. Claimant has not been terminated and the employer still considers him an employee subject to the work release.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since claimant has been disqualified in this matter after receiving UI benefits, the overpayment issue is remanded to claims for a decision.

DECISION:

The department decision dated April 5, 2013, reference 02, is reversed. The claimant voluntarily left without good cause attributable to the employer on February 26, 2013 due to non-job related health condition, and he has not received an unrestricted release to return to work. He does not meet the availability requirements of the law. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs