

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANNY M WAKATANI

Claimant

APPEAL NO. 12A-UI-06303-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 05/06/12

Claimant: Appellant (4-R)

871 IAC 24.1(113) – Other Separations
Iowa Code section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the May 29, 2012, reference 01 decision that denied benefits. After due notice was issued, a hearing was held on June 21, 2012. Claimant participated. Dave Dalmasso, human resources representative, represented the employer. Exhibits A through D were received into evidence.

ISSUES:

Whether the claimant separated from the employment for a reason that makes her ineligible for unemployment insurance benefits.

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Wakatani was employed by Heartland Express Inc. of Iowa as a full-time over-the-road truck driver from July 2011 and last performed work for the employer on April 16, 2012. Mr. Wakatani's immediate supervisor was Fleet Manager Dan Williams. Mr. Wakatani has at all relevant times resided in Arlington, Texas. After Mr. Wakatani performed work for the employer on April 16, he was scheduled to have April 17 and 18 off and scheduled to return to work on April 19.

On April 17, 2012, Mr. Wakatani suffered a non-work-related detached retina. Mr. Wakatani sought medical treatment and underwent surgery to reattach the retina on April 23, 2012. The surgery initially appeared successful.

On April 24, the surgeon released Mr. Wakatani to return to work on May 1, 2012, but restricted Mr. Wakatani from driving in altitudes greater than 650 feet above sea level. Mr. Wakatani had a nitrous oxide bubble in his eye to assist with the reattachment and healing of his retina. Mr. Wakatani would be without the use of the affected eye until it had healed. The doctor

advised Mr. Wakatani that he believed Mr. Wakatani could legally drive in Texas with only one functional eye, but the doctor added that he did not know whether this included operating a commercial motor vehicle. The doctor told Mr. Wakatani that it would be up to the employer to decide whether Mr. Wakatani could operate a commercial motor vehicle with only one functional eye.

On the morning of April 19, 2012, Mr. Wakatani contacted Fleet Manager Dan Williams to let him know that he could not return to work at that time because he needed to undergo surgery on his eye. Mr. Williams asked Mr. Wakatani to keep him posted with regard to the surgery and Mr. Wakatani's ability to return to work. Mr. Wakatani also contacted Heartland Express employee Renée Meyers to discuss his health insurance, his need for time off from work, and the possibility of leave under the Family and Medical Leave Act (FMLA). Ms. Meyers advised Mr. Wakatani that he had not worked for the employer long enough to be eligible for FMLA leave. Ms. Meyers discussed with Mr. Wakatani the employer's 15-day leave policy that would apply to Mr. Wakatani's situation. The policy allowed Mr. Wakatani to be away from work for 15 days, at which time the employer would deem Mr. Wakatani to have voluntarily separated from the employment. If that occurred, Mr. Wakatani would have to reapply to return to the employment. Ms. Meyers told Mr. Wakatani that he would have until May 7, 2012 to return to the employment, after which he would be deemed to have voluntarily separated from the employment.

After Mr. Wakatani had a follow-up visit with the surgeon on April 24 and the surgeon announced the surgery to be a success, Mr. Wakatani contacted Tracy Holdorf, driver communication representative. Mr. Wakatani did not provide the employer with any medical documentation. Mr. Wakatani communicated to Ms. Holdorf and to Mr. Williams that he had been released to return to work with the 650 feet altitude restriction. Mr. Wakatani asked Mr. Williams whether he could be assigned to a Texas-only driving fleet. Mr. Williams told Mr. Wakatani he could not drive for the employer because of his medical restrictions. The employer did not have a Texas-only driving fleet. Instead, the drivers who operated in Texas also ran freight in six other states in the region. The employer did not have any mechanism in its trucks to measure altitude. Mr. Williams wanted Mr. Wakatani to return to the employment when he had a full medical release. The employer's Texas recruiter advised Mr. Wakatani that the employer would hire him back once he had a full medical release.

Mr. Wakatani ended up not being released by the doctor to return to work on May 1, 2012. Instead, the initial surgery proved not to be completely successful and Mr. Wakatani had to undergo a second surgery on May 30, 2012. The employer last had contact with Mr. Wakatani on May 18, 2012, at which time Mr. Wakatani told Renée Meyers that he had not been released to return to work without restrictions. After the May 30 surgery, Mr. Wakatani had to begin the healing process all over again. Mr. Wakatani was still subject to the 650 feet altitude restriction.

Mr. Wakatani established a claim for unemployment insurance benefits that was effective May 6, 2012. Mr. Wakatani started his search for new employment during the week that ended May 12, 2012. From that week through the week that ended June 16, Mr. Wakatani made two job contacts. Mr. Wakatani has focused his job search on a 10-mile radius of Arlington, Texas. Mr. Wakatani has not sought other driving positions, but has instead focused his search on other types of employment he could perform with one functional eye.

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 employment that falls within the category known as other separations. Mr. Wakatani did not voluntarily quit the employment. He did not want to go off work or separate from the employment. Within a few days of commencing an approved leave so that he could undergo eye surgery, Mr. Wakatani told the employer that he could return to work on May 1, 2012, so long as he stayed under 650 feet above sea level. The employer did not have the ability to accommodate that type of restriction. Nor would it have been safe for Mr. Wakatani or others if he had attempted to operate the employer's tractor-trailer rig with only one functional eye. Rather than voluntarily quitting the employment, Mr. Wakatani separated from the employment because he could no longer meet the physical standards required. The separation for this reason would not disqualify Mr. Wakatani for unemployment insurance benefits. Mr. Wakatani would be eligible for unemployment insurance benefits, provided he is able to meet all of the other eligibility requirements. Under the law, because this was neither a voluntary quit nor a discharge for misconduct, the employer's account may be charged for benefits paid to Mr. Wakatani. See Iowa Code section 96.5.

The remaining issues are whether Mr. Wakatani has been able to work, available for work, and engaged in an active and earnest search for new employment since he filed his claim for unemployment insurance benefits. There are multiple factors to be considered.

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 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Mr. Wakatani's temporary loss of use of one of his eyes would not prevent him from being *able* to perform many types of work that people perform in the community. Mr. Wakatani's medical

release does not impose any restrictions on Mr. Wakatani other than the prohibition against flying and the prohibition against driving at altitudes above 650 feet above sea level. Mr. Wakatani focused his job search on the types of work that he could do. Mr. Wakatani satisfied the work search, work ability, and work availability requirements during the weeks that ended May 12, 19 and 26, 2012 and is eligible for benefits for those weeks, provided he meets all other eligibility requirements.

During the week that ended June 2, 2012, Mr. Wakatani was preparing for surgery, undergoing surgery, and beginning his recovery from surgery. The weight of the evidence indicates that Mr. Wakatani was *not* able to work or available for work during the majority of the week that ended June 2, 2012. Mr. Wakatani is *not* eligible for benefits for the week ending June 2, 2012.

The weight of the evidence indicates that Mr. Wakatani was able to work, available for work, and searching for work during the weeks that ended June 9 and 16, 2012. Mr. Wakatani is eligible for benefits for those two weeks, provided he meets all other eligibility requirements.

During the week that ended June 23, 2012, Mr. Wakatani had not made any job contacts as of the hearing set for that Thursday. The weight of the evidence indicates that Mr. Wakatani did not meet the work search or availability requirements for that week, and was not eligible for benefits for the week ending June 23, 2012.

This matter will be remanded to the Claims Division for determination of Mr. Wakatani's work ability, work availability, and work search activities since June 24, 2012. This should include submission and consideration of updated medical documentation.

DECISION:

The Agency representative's May 29, 2012, reference 01, decision is modified as follows. The claimant neither quit nor was discharged from the employment. The claimant's separation falls into the category of "other separations" and was due his inability to meet the physical requirements of the employment. The claimant would be eligible for benefits provided he is otherwise eligible. The employers account may be charged.

The claimant satisfied the work search, work ability, and work availability requirements during the weeks that ended May 12, 19 and 26, 2012 and is eligible for benefits for those weeks, provided he meets all other eligibility requirements.

The claimant was *not* able to work or available for work during the majority of the week that ended June 2, 2012, and is *not* eligible for benefits for that week.

The claimant was able to work, available for work, and searching for work during the weeks that ended June 9 and 16, 2012. The claimant is eligible for benefits for those two weeks, provided he meets all other eligibility requirements.

The claimant did not meet the work search or availability requirements for the week that ended June 23, 2012 and was not eligible for benefits for that week.

This matter will be remanded to the Claims Division for determination of the claimant's work ability, work availability, and work search activities since June 24, 2012. This should include submission and consideration of updated medical documentation.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw