

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH J JONES
Claimant

APPEAL NO. 12A-UI-01742-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 01/01/12
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1)(d) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 16, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 8, 2012. Claimant Kenneth Jones participated. Lea Peters represented the employer. Exhibit One was received into evidence.

ISSUE:

Whether Mr. Jones separated from the employer for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kenneth Jones was employed by Heartland Express, Inc., of Iowa as a full-time over-the-road truck driver from 2008 until December 30, 2011, when he voluntarily quit. Mr. Jones is a diabetic. On November 11, 2011, Mr. Jones met with his doctor, who indicated that his blood sugar level required that he go on insulin. About a week later, Mr. Jones received written notice from the North Carolina Department of Transportation that effective January 30, 2012, he would not long be eligible to drive a commercial motor vehicle unless he underwent a physical and obtained a waiver. The notice directed him to appear in person to apply for a new license that would reflect any medical restrictions or he would lose all driving privileges.

On November 25, 2011, Mr. Jones went to his local Department of Motor Vehicles office in North Carolina and spoke to a representative. Mr. Jones learned that he could not get the waiver to operate a vehicle commercially until he had first been on insulin for two months. He would then have to undergo a medical review every three months.

On the following Monday, Mr. Jones contacted the safety department at Heartland Express and spoke with a representative. The Heartland Express representative told Mr. Jones that he could not perform work for the company as a driver while he was taking insulin. Mr. Jones inquired whether he could commence a leave under the Family and Medical Leave Act and was told that if he was insulin dependent, he would need to separate from his driver position with the

employment and re-apply once he was no longer insulin dependent. Mr. Jones asked whether there might be a non-driving position available. Mr. Jones was welcome to apply for a non-driver position, but would have to relocate to a different state, since the employer did not have any terminals in North Carolina.

Though according to the notice he had received from the North Carolina D.O.T. he was legal to drive until January 30, 2012, Mr. Jones decided to separate from the employment at the end of the year. Mr. Jones provided written notice to the employer that he was quitting effective December 30, 2011 due to personal issues at home. Mr. Jones was anxious to get started with the insulin and to lose weight in the hope that he might be able to stop taking insulin. Mr. Jones did not mention in his written resignation that he was separating because his doctor had prescribed insulin. Mr. Jones worked his notice period and separated from the employment on December 30, 2011. At the time Mr. Jones separated from the employment, the employer continued to have work available for him. Mr. Jones was not able to start taking insulin until February 2012 due to issues with insurance. Since Mr. Jones separated from the employment, he has not been able to go off insulin, has not been released by his doctor to return to commercial trucking, and has not contacted the employer to request his job back.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d 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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and

constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job. In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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 indicates that Mr. Jones voluntarily quit work due to a non-work-related medical condition upon the advice of his physician. Since leaving the employment, Mr. Jones has not recovered, has not been released to return to the work, and has not contacted the employer to request his job back. Mr. Jones' voluntary quit was without good cause attributable to the employer. Accordingly, Mr. Jones is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Mr. Jones.

Mr. Jones can also requalify for benefits by recovering from the insulin dependency, being released by a doctor to return to work, obtaining the appropriate D.O.T. driving privileges, and contacting the employer to offer his services. If at that point the employer does not have work for him, Mr. Jones would be eligible for benefits, provided he meets all other eligibility requirements, and the employer could be held liable for benefits.

Iowa Code section 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

The evidence raises the question of whether the claimant has been able to work and available for work since he established his claim for benefits. This matter will be remanded to the Claims Division for initial adjudication of those issues.

DECISION:

The Agency representative's February 16, 2012, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until 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 employer's account shall not be charged.

The claimant can also requalify for benefits by recovering from the insulin dependency, being released by a doctor to return to work, obtaining the appropriate D.O.T. driving privileges, and contacting the employer to offer his services. If at that point the employer does not have work for him, the claimant would be eligible for benefits, provided he meets all other eligibility requirements, and the employer could be held liable for benefits.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits. The remand should also address the able and available issues.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs