

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL L FOX
Claimant

APPEAL NO. 16A-UI-08175-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROSSROADS INC
Employer

OC: 05/15/16
Claimant: Appellant (2/R)

871 IAC 24.1(113) – Other Separations

STATEMENT OF THE CASE:

Daniel Fox filed a timely appeal from the July 21, 2016, reference 04, decision that disqualified Mr. Fox for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Mr. Fox had voluntarily quit the employment on July 6, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on August 15, 2016. Mr. Fox participated. Michele Hawkins of Equifax represented the employer and presented testimony through Linda Wilson. The hearing in this matter was consolidated with the hearing in Appeal Numbers 16A-UI-08173-JTT and 16A-UI-08174-JTT. Exhibits A through D and Department Exhibit D-1 was received into evidence in the present matter.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Daniel Fox was employed by Crossroads, Inc. as a full-time Production Utility worker from July 2015 and last performed work for the employer on May 2, 2016. Mr. Fox's regular work hours at the start of the employment and toward the end of the employment were 7:30 a.m. to 4:00 p.m., Monday through Friday. Mr. Fox's immediate supervisor was Randy Russell, Production/Operations Manager. Mr. Fox's duties included retrieving product to complete orders, shipping and receiving, quality inspection, janitorial duties, and general maintenance duties. Mr. Fox estimates that he regularly spent 90 minutes per day operating a commercial motor vehicle that required a commercial driver's license and on occasion would operate such vehicle up to 3.5 hours in a shift. Mr. Fox estimates that he regularly spent one or two hours per shift operating vehicles that did not require a commercial driver's license. The employer estimates that three to four hours of Mr. Fox's regular work day would involve operating a commercial motor vehicle that required a commercial driver's license.

Mr. Fox's written job description set forth the essential functions of the Production Utility position as follows:

ESSENTIAL FUNCTIONS:

1. Performs duties of driver for pickup and deliveries
2. Loading and unloading truck and delivering parts and supplies to appropriate area
3. Performs lawn care, including trimming, weeding, mowing, and snow removal – as needed
4. Reports problems and possible solutions concerning general condition of buildings, grounds, vehicles, and production equipment
5. Fills pop machines in client break room and orders pop
6. Performs minor building and equipment repairs, including electrical, plumbing and painting
7. Fills in as needed in other positions in the company

The written job description set forth the qualifications for the Production Utility position as follows:

QUALIFICATIONS

1. Require proof of a valid class D CDL driver's license
2. Able to tolerate very high or low temperatures
3. Able to lift and move up to 50 pounds frequently
4. Able to interact in a professional manner with clients, staff, customers, and visitors
5. Must have good written and oral communication skills

The written job description summarized the physical demands of the Production Utility position as follows:

PHYSICAL DEMANDS: In order to do the essential functions of the job, the employee must be able to hear and talk. This position is very active and requires standing, walking, bending, kneeling, stooping, crouching, crawling, and climbing. The employee must be able to frequently lift/and or move items up to 50 pounds. Excellent vision is required to perform the driving responsibilities.

Leading up to May 2, 2016, Mr. Fox's last day worked, Mr. Fox sought medical evaluation and treatment for a bump that had developed in the back of his right eye. On May 3, 2016, Mr. Fox underwent a biopsy procedure at the Department of Ophthalmology at the University of Iowa Hospitals and Clinics. Mr. Fox requested and the employer approved time off so that Mr. Fox could undergo the procedure. During the biopsy procedure, Mr. Fox suffered a complication that led to blood pooling in his eye. The biopsy complication caused a decrease in Mr. Fox's visual acuity that prevented him from meeting federal standards for operating a commercial motor vehicle. To meet United States Department of Transportation Federal Motor Carrier Safety Administrative Regulations applicable to operating a commercial motor vehicle requiring a commercial driver's license, Mr. Fox needed to have 20/40 vision in each eye. Since May 3, 2016, Mr. Fox has not been able to meet the requirement in his right eye. Mr. Fox has at all relevant times had satisfactory vision in his left eye.

On May 24, 2016, the employer received medical documentation that indicated Mr. Fox was released to perform duties that did not involve lifting more than 20 pounds and that did not involve operation of a commercial motor vehicle. The combination of restrictions prevented Mr. Fox from being able to perform any of his work duties. The parties treated Mr. Fox's continued time off as an approved leave of absence.

On June 2, 2016, Mr. Fox had a follow up appointment with the doctor. Mr. Fox or his doctor provided the employer with updated documentation that indicated Mr. Fox continued to be unable to perform commercial driving duties that required a commercial driver's license. In other words, Mr. Fox was released to return to his work duties that did not require a commercial driver's license. Ms. Wilson decided that if Mr. Fox could not return to the duties that required a commercial driver's license, he would not be allowed to return to any of his duties. Ms. Wilson cites the job description requirement of "excellent vision" as the basis for her decision not to allow Mr. Fox to return to work so long as the vision in his right eye did not meet the federal department of transportation requirements for a commercial driver's license. Mr. Fox has consistently expressed desire to return to his work duties. While Mr. Fox has remained subject to the commercial driving ineligibility, Mr. Fox has consistently expressed desire to return to his duties that did not require a commercial driver's license.

On June 8, 2016, Mr. Fox had a follow up appointment with the doctor. On June 10, 2016, the employer received documentation that indicated Mr. Fox was released to return to work effective June 13, 2016 without restrictions. Before the return to work date, Mr. Fox notified his supervisor that he had suffered a relapse in his recovery and was not able to return to his driving duties that required a commercial driver's license.

On June 15, 2016, Mr. Fox had a follow up appointment with the doctor. The employer received documentation that again indicated Mr. Fox could return to work that did not require a commercial driver's license. The employer continued to deem Mr. Fox to be on an approved leave of absence.

On July 6, 2016, Mr. Fox had another follow up appointment with the doctor, but his medical condition and his restrictions remained unchanged. Mr. Fox called Ms. Wilson after the appointment to provide an update on his status. Mr. Fox told Ms. Wilson that he was not better, that he could not wait much longer to be released to perform the duties that required a commercial driver's license. Mr. Fox told Ms. Wilson that if he could not return to work, he would have to look for other employment. Mr. Fox did not give notice of an intention to quit the employment and Ms. Wilson did not at the time take Mr. Fox's comments to mean that he was quitting.

Mr. Fox has not been released to return to duties that require a commercial driver's license. Accordingly, Mr. Fox has not returned with proof of such release and with an offer to return to the employment.

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 weight of the evidence establishes a separation from the employment that falls within the category known as “other separations.” Mr. Fox at all relevant times desired to continue in the employment and return to his duties. From May 3, 2016 onward, Mr. Fox was unable to meet the physical requirements a significant part of the employment, the commercial driving duties that required a commercial driver's license, due to an eye condition that prevented him from meeting federal regulations applicable to commercial truck drivers. The employer declined to allow Mr. Fox return to any of the work duties so long as his medical condition prevented him from meeting the physical demands applicable to the commercial truck driving duties. The involuntary separation occurred before the July 6, 2016 discussion during which Mr. Fox expressed frustration in not being released to perform the commercial truck driving duties and not being allowed to return to any aspect of his duties. The involuntary separation does not disqualify Mr. Fox for unemployment insurance benefits and does not relieve the employer of liability for benefits. Mr. Fox is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

This matter is remanded for determination of whether the claimant has been able to work and available for work effective the July 3, 2016, the effective date of the additional claim for benefits.

DECISION:

The July 21, 2016, reference 04, decision is reversed. The claimant involuntarily separated from the employment due to his inability to meet the physical requirements of the employment. The claimant's separation falls into that category known as “other separations.” The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

This matter is remanded for determination of whether the claimant has been able to work and available for work effective the July 3, 2016, the effective date of the additional claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs