

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPER F DAVIS

Claimant

APPEAL NO. 09A-UI-00690-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC

Employer

**OC: 12/14/08 R: 12
Claimant: Respondent (5)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 9, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 2, 2009. Claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Tracy Murphy, Human Resources Coordinator, represented the employer.

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: Christopher Davis commenced his full-time employment with Barr-Nunn Transportation on October 6, 2005 and last performed work for the employer on September 1, 2008. Mr. Davis was employed as an over-the-road truck driver. On or about September 1, Mr. Davis commenced an approved medical leave under the Family and Medical Leave Act (FMLA). Mr. Davis had broken his left leg in a non-work-related incident. Because Mr. Davis had previously utilized FMLA leave within the prior year, the remaining balance of Mr. Davis's FMLA leave expired on November 3, 2008. However, Mr. Davis's doctor had not yet granted him a release to return to the employment. Mr. Davis expressed an interest in continuing in the employment and did not express an intent to sever the employment relationship. Under the employer's written policy, an employee was deemed to have voluntarily quit if the employee was unable to return to work at the end of an approved leave period. Because Mr. Davis had not been released to return to the employment, the employer told him the employment was ended, but that he could reapply at some later date.

On or about December 8, 2008, Mr. Davis applied for rehire. Mr. Davis still had the same driving privileges he had during his previous employment with the employer. Mr. Davis's doctor had granted Mr. Davis a full medical release. The employer elected not to rehire Mr. Davis.

Mr. Davis filed his claim for unemployment insurance benefits in response to the employer's decision not to re-hire him. The claim for benefits was effective December 14, 2008.

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 that Mr. Davis neither voluntarily quit nor was discharged by the employer. The evidence indicates that Mr. Davis intended to continue in the employment, that his approved leave had expired, and that he failed to meet the physical standards required for the employment at the point where the approved leave expired. The evidence indicates that Mr. Davis's separation from the employment falls under the heading of "other separations" referenced above. The separation from the employment did not disqualify Mr. Davis for unemployment insurance benefits. Mr. Davis was eligible for unemployment insurance benefits, provided he met all other eligibility requirements. The employer's account may be charged for benefits paid to Mr. Davis.

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.

The weight of the evidence indicates that Mr. Davis was granted a full medical release prior to December 14, 2008, the effective date of his claim for unemployment insurance benefits. The evidence indicates that Mr. Davis still possessed the same truck driving credentials he possessed during his previous period of employment. The weight of the evidence indicates that Mr. Davis was able and available for work. Mr. Davis was eligible for benefits, provided he was otherwise eligible.

DECISION:

The Agency representative's January 9, 2009, 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 has been able to work and available for work, as required by Iowa Code section 96.4(3), since establishing his claim for benefits. The

claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css