

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WAYNE R GERVAIS
Claimant

APPEAL NO. 11A-UI-12625-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COPELAND TRUCKING INC
Employer

OC: 08/29/10
Claimant: Appellant (2-R)

871 IAC 24.1(113) – Other Separations

STATEMENT OF THE CASE:

Wayne Gervais filed a timely appeal from the September 2, 2011, reference 05, decision that denied benefits. After due notice was issued, a hearing was held on October 18, 2011. Mr. Gervais participated. The employer did not respond to the hearing notice and did not participate.

ISSUES:

Whether there had been a separation from the employment or whether Mr. Gervais is still attached to the employment.

If there has been a separation, whether the separation disqualifies Mr. Gervais for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Wayne Gervais started his employment with Copeland Trucking, Inc., in August 2010 and has performed work for the company as a full-time over-the-road truck driver. Mr. Gervais last performed work for the employer on or about August 12, 2011. At that point, Mr. Gervais' Department of Transportation physical card was about to expire on August 16, 2011. Mr. Gervais had multiple health problems that he believed prevented him from being able to pass a D.O.T. physical. Mr. Gervais had to pass the D.O.T. physical and have the appropriate documentation in order to legally operate a commercial vehicle and in order to legally perform his regular duties for the employer. Mr. Gervais had a worsening back condition. Mr. Gervais would black out if he tilted and/or turned his neck a certain way. Mr. Gervais is diabetic, but so far has been able to take oral insulin. The employer does not pay for D.O.T. physicals. At the time of the October 18, 2011 appeal hearing, Mr. Gervais had an appointment scheduled with a V.A. doctor on October 28, 2011.

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 there was a separation from the employment. That separation was effective on or about August 12, 2011. The separation was based solely on Mr. Gervais' inability at that time to meet the physical demands of the employment as prescribed by the U.S. Department of Transportation. The evidence indicates that Mr. Gervais' separation falls within that category known as "other separations." Because the separation was not based on a voluntary quit or based on a discharge for misconduct, the separation would not disqualify Mr. Gervais for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

This matter will be remanded to the Claims Division for determination of whether Mr. Gervais has met the work ability and availability requirements of Iowa Code § 96.4(3) since he established his claim for benefits.

DECISION:

The Agency representative's September 2, 2011, reference 05, decision is reversed. The claimant neither quit nor was discharged from the employment. The claimant's separation falls into the category of "other separations" and was due to his inability to meet the physical requirements of the employment. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

This matter is remanded to the Claims Division for determination of whether the claimant has met the work ability and availability requirements of Iowa Code § 96.4(3) since he established his claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs