

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLEN W TURNEY
Claimant

APPEAL NO. 12A-UI-03406-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 12/11/11
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Allen Turney filed a timely appeal from the April 2, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 18, 2012. Mr. Turney participated. Sandy Matt, Human Resources Specialist, represented the employer.

ISSUES:

Whether Mr. Turney separated from the employment for a reason that makes him ineligible for unemployment insurance benefits.

Whether Mr. Turney has been able to work and available for work since establishing his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Allen Turney was employed by CRST Van Expedited, Inc., as a full-time over-the-road truck driver beginning in 1997 and last performed work for the employer on June 8, 2011. At that point, Mr. Turney's immediate supervisor was Lisa Seipel, Fleet Manager. Mr. Turney's commercial truck driving duties subjected him to U.S. Department of Transportation Federal Motor Carrier Safety Administration regulations. These included a requirement that Mr. Turney pass a periodic DOT medical exam to obtain a commercial motor vehicle (CMV) certificate. For health drivers, the certificate is valid for 24 months. For at least the last few years, Mr. Turney's CMV certificate has only been valid for a year at a time. Mr. Turney has a history of health problems. In 2009, Mr. Turney underwent a triple bypass. Mr. Turney also suffers from diabetes. Until May 2011, Mr. Turney's diabetes had been treated through oral medication and did not require injected insulin. Injected insulin dependence renders a driver ineligible to operate a commercial motor vehicle under the federal DOT regulations. Mr. Turney also suffers from sleep apnea.

Mr. Turney's most recent CMV certificate expired on July 15, 2011. Mr. Turney went off work effective June 8, 2011, for the purpose of undergoing the required D.O.T. The employer arranged for Mr. Turney to meet with a doctor in Saint Louis who was authorized to conduct

D.O.T. physicals. Mr. Turney had not told the employer that he had become insulin dependent in May 2011 or that he had been operating the employer's truck for a month while he was insulin dependent. The employer's policy would not have allowed him to operate the employer's tractor-trailer while he was insulin dependent. When Mr. Turney met with the doctor in June, the doctor was concerned both about the sleep apnea issue and the diabetes. The doctor declined to issue a new CMV certificate. The doctor indicated that Mr. Turney would need to undergo a sleep study and that indicated that Mr. Turney would need to provide additional information concerning his insulin dependence.

Based on the health issues addressed at the time of the June 2011 physical, Mr. Turney commenced an approved leave of absence and commenced receiving short-term disability benefits through the employer's third-party provider. The employer's short-term disability benefits are limited to six months, 26 weeks. The employer notified Mr. Turney that the employment would be considered terminated if Mr. Turney did not return to work at or before the short-term benefit period expired. In July 2011, Mr. Turney met with an endocrinologist to further address his diabetes. Mr. Turney continued on the injected insulin and has continued to this day to be dependent on injected insulin to control his diabetes. Mr. Turney has never obtained a new CMV certificate and has never been released by a doctor to return to his truck driving duties.

Mr. Turney's short-term disability benefits expired on December 7, 2011. In connection with the short-term disability benefits coming to an end, Mr. Turney commenced paying health insurance premiums out of pocket. This occurred in the absence of any discussion between Mr. Turney and the employer or third party provider. This continued for a couple months. In February 2012, Mr. Turney received back through the mail his most recent insurance premium check and an additional credit for the insurance check he had sent in January. In response to getting the insurance payments back, Mr. Turney contacted a CRST human resources representative, who advised that the employer considered the employment terminated. Mr. Turney also spoke to Fleet Manager Lisa Seipel, who confirmed a termination of employment deemed effective in December 2011. The employer documented December 7, 2011 as the last day of the employment.

Toward the beginning of March 2012, Mr. Turney established an Iowa claim for unemployment insurance benefits that Iowa Workforce Development backdated to December 11, 2011. Prior to March 6, 2012, Mr. Turney did not search for new employment. Mr. Turney did not begin to look for work in earnest until the first week of April, immediately following the April 2, 2012, reference 01 decision that denied unemployment insurance benefits. During the first two weeks of April, Mr. Turney made three job contacts per week. Mr. Turney has sought work at an auto salvage company, a couple of warehouses, a tire store, and a transmission repair company.

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 fails to establish a voluntary quit. Mr. Turney did not make a decision to leave the employment and did not notify the employer of any such decision. The evidence indicates instead a separation that was based on Mr. Turney's inability, based on chronic health reasons, to meet the physical standards required for the work. The separation from the employment falls into that category known as "other separations." The separation would not disqualify Mr. Turney for unemployment insurance benefits. Because the separation was neither a voluntary quit, nor a discharge for misconduct, the employer's account may be charged for benefits paid to Mr. Turney.

The remaining issues are whether Mr. Turney has been able to work and available for work since the December 11, 2011 effective date of his claim for benefits.

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. Turney's insulin dependence precludes him from performing commercial truck driving duties, but does not prevent him from being *able* to perform other types of work. Mr. Turney's heart history and sleep apnea do not prevent him from being *able* to perform work. Mr. Turney's recent job search indicates a willingness to look for work outside the truck driving field. The weight of the evidence indicates that Mr. Turney has been both available for work and engaged in an active and earnest search for new employment since the benefit week that ended April 7, 2012. The weight of the evidence indicates that Mr. Turney was not available for full-time work and not actively and earnestly engaged in a search for new full-time work prior to that week. Mr. Turney is eligible for unemployment insurance benefits effective April 1, 2012, provided he is otherwise eligible. Mr. Turney is not eligible for benefits for the period of December 11, 2011 through March 31, 2012.

DECISION:

The Agency representative's April 2, 2012, reference 01, decision is modified as follows. The claimant neither voluntarily quit nor was discharged from the employment for misconduct. 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 separation did not disqualify the claimant for unemployment insurance benefits. The claimant would be eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

The claimant was able to work, but not available for full-time work or engaged in an active and earnest search for new full-time employment prior to April 1, 2012. The claimant is not eligible for benefits for the period of December 11, 2011 through March 31, 2012. Effective April 1, 2012, the claimant has been available for work and engaged in an active and earnest search for work. Effective April 1, 2012, the claimant is eligible for benefits, provided he is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs