

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS W HEIDLER
Claimant

APPEAL NO. 13A-UI-11696-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAY TRANSPORTATION INC
Employer

**OC: 09/22/13
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 October 11, 2013, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits paid to the claimant. After due notice was issued, a hearing was held on November 12, 2013. Claimant Thomas Heidler participated. The employer representative was not available at the number the employer provided for the hearing and did not participate in the hearing. The administrative law judge took official notice of the agency's administrative record (APLT and Clear2There Hearing Control screen) that documents the telephone number the employer provided for hearing.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Thomas Heidler was employed by Gray Transportation, Inc., as a full-time over-the-road truck driver from October 2012 and last performed work for the employer on April 15, 2013. On that day, Mr. Heidler suffered a stroke at a time when he was performing work on behalf of the employer. Mr. Heidler was hospitalized for a week and diagnosed with a mild stroke. Mr. Heidler's duties as a commercial truck driver subjected him to federal Department of Transportation regulations that prohibited him from operating a commercial motor vehicle within a year after suffering a stroke. The employer notified Mr. Heidler that the employer had spoken with its legal department, which advised that Mr. Heidler could not operate a commercial motor vehicle for a year after suffering a stroke. In addition, Mr. Heidler's physician advised Mr. Heidler that he would not release Mr. Heidler to return to commercial truck driving duties prior to a year following the stroke. Mr. Heidler wished to continue in the employment, but could not do so because he could no longer meet the physical requirements to obtain medical certification to operate a commercial truck. At no time did Mr. Heidler advise the employer that he intended to quit the employment.

The employer did not offer any other employment to Mr. Heidler. Mr. Heidler has at all relevant times resided in Michigan. The employer is located in Waterloo, Iowa.

After Mr. Heidler separated from the employment, his doctor did release him to operate a personal vehicle, but still did not release Mr. Heidler to operate a commercial motor vehicle.

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. The evidence indicates instead that Mr. Heidler wanted to continue in the employment, but was compelled to separate from the employment because he no longer met the physical standards required to be able to legally perform the commercial trucking duties. Ms. Heidler's separation from the employment falls within the category known as other separations, neither a quit nor a discharge. Because the separation was neither a disqualifying quit or discharge, Mr. Heidler remains eligible for benefits provided he meets all other eligibility requirements. See Iowa Code section 96.5(1) (regarding voluntary quits without good cause attributable to the employer) and Iowa Code section 96.5(2)(a) (regarding discharges for misconduct in connection with the employment). Because Mr. Heidler did not separate from the employment for a reason that disqualifies him for benefits, the employer's account may be charged for benefits paid to Mr. Heidler.

Because the issue of whether Mr. Heidler meets the requirements of being able to work and available for work have been addressed by the Claims Division and were not issues involved in the appeal, there is no need to address them here or to remand for additional action on those issues.

DECISION:

The agency representative's October 11, 2013, 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 to his inability to meet the physical requirements of the employment after April 15, 2013. 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/pjs