IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 – EI

GEORGE E BOONE
Claimant

BARR-NUNN TRANSPORTATION INC
Employer

APPEAL NO: 07A-UI-06417-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/27/07 R: 12
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

George E. Boone (claimant) appealed a representative's June 25, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Barr-Nunn Transportation, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 16, 2007. The claimant participated in the hearing. Tracy Murphy, the human resource coordinator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 8, 2005. The claimant worked as a full-time over-the-road driver. The last day the claimant worked was February 23, 2007. The claimant had not planned this to be his last day of work. On or about February 23, the claimant suffered a stroke. The claimant did not realize he had suffered a stroke, but went to the hospital after his son insisted. The claimant contacted the employer as soon as possible and reported that he was hospitalized after suffering a stroke.

The claimant was released from the hospital on March 5 and sent to rehabilitation. The claimant knew he would no longer be able to drive as a result of the stroke. The stroke left the claimant's right side weak.

The claimant understood the employer would allow him to work as a team lead/dispatcher when the claimant's doctor's released him to work. On April 4, 2007, the claimant was released to work, but not as a truck driver. On April 26, 2007, the claimant's physician repeated that the

claimant was released to work, but with some restrictions because of the limitations the claimant experienced with his right hand and foot.

On April 7, 2007, the claimant mailed an application to the employer to work as a team lead/dispatcher. The employer did not respond to the claimant's application. On May 7, the employer informed the claimant in a letter that on May 26, 2007, his medical leave, under FMLA, would end. If the claimant was unable to return to work as a truck driver at that time, he no longer had a job with the employer. The employer did not have any team lead/dispatcher job available. The employer no longer considered the claimant an employee as of May 26, 2007, because he was unable to return to work as a truck driver when his medical leave ended.

REASONING AND CONCLUSIONS OF LAW:

Three provisions of the unemployment insurance law disqualify claimants until they have been reemployed and have been paid wages for insured work equal to ten times their weekly benefit amount. An individual is subject to such a disqualification if the individual (1) is discharged for work-connected misconduct (Iowa Code section 96.5-2-a), (2) fails to accept suitable work without good cause (Iowa Code section 96.5-3), or (3) "has left work voluntarily without good cause attributable to the individual's employer." (Iowa Code section 96.5-1). The question is whether Iowa Code section 96.5-1 applies here since the evidence establishes the claimant was not discharged for misconduct.

Iowa Code section 96.5-1-d provides that an individual who is subject to disqualification under Iowa Code section 96.5-1 is not disqualified:

> If the individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury, or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available.

The rule implementing Iowa Code section 96.5-1-d explains that "[r]ecovery is defined as the ability of the claimant to perform all of the duties of the previous employment." 871 IAC 24.26(6)a.

The issue then is whether a person is subject to voluntary quit disqualification under Iowa Code section 96.5-1 under the following circumstances. The person is actively working but then is diagnosed with a medical condition that disqualifies him from performing his normal job duties and the employer determines there is no work available for him with certain work restrictions. The person has never stated he is quitting employment. The employer has not formally discharged the claimant from employment but has stated that the employee cannot return to work until he is able to return to work and perform the job he was hired to do.

The problem is that the case law points in several directions and has not addressed this issue head on. Additionally, the statute and rules are unclear as to this issue. For example, in Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989), the Iowa Supreme Court considered the case of a pregnant certified nursing assistant (CNA) who went to her employer with a physician's release that limited her to lifting no more than 25 pounds. Wills filed a claim for benefits because the employer would not let her return to work because its policy did not provide employees with light-duty work. The court ruled that Wills became unemployed

involuntarily and was able to work because the weight restriction did not preclude her from performing other jobs available in the labor market. Id. at 138. The court characterized the separation from employment as a termination by the employer, but in essence the employer informed the claimant that it did not have any jobs available meeting her restrictions and would not create a job to accommodate her restrictions. The court does not mention Iowa Code section 96.5-1-d at all. Perhaps significantly, the facts do not indicate that the claimant had stopped working at any point, and it was the employer who requested that she go to her doctor to get a release to continue working.

On the other hand, in White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992), the Iowa Supreme Court considered the case of the truck driver who was off work due to a heart attack for about three months, returned to work for a month, and then was off work for seven months after a second heart attack. He then returned to his place of employment and informed management that his doctor had instructed him that he was unable to drive because of his pacemaker device. The employer had no work available work for the claimant with his work restriction. The claimant then applied for unemployment insurance benefits. Id. at 343. The facts did not indicate whether the claimant stated he was quitting employment or intended to permanently sever the employment relationship at any point. In White, the court reversed the district court's decision that the claimant quit work involuntarily due to a physical disability and stated that "unemployment due to illness raises policy considerations which call for a continuation of the rules laid out in cases antedating [the cases relied on by the district court] ... Under these rules, if White's disability was not work-related, the agency properly imposed the disqualification. If, however, the cause of White's disability was work related, the disqualification was improper." Id. at 345. The court decided there had been no finding as to whether the disability was or was not work-related and remanded the case. The court does not refer to or distinguish the Wills case. It does not explain how the first prong of the voluntary quit disqualification test set forth earlier in its decision---"it must be demonstrated that the individual left work voluntarily"---had been met.

To voluntarily quit means a claimant exercises a voluntary choice of remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

In my judgment, the facts of the White case more closely resemble this case. The claimant had to stop working because of a stroke. While the claimant was in rehabilitation, he knew he would never be able to drive again as a job. When the claimant applied for the lead/dispatcher job, he informed the employer he would never be able to work as a driver again. The claimant did not intend or plan to quit working as a driver after February 23, 2007, but as a result of the stroke, the claimant could not return to work as a driver. Since the claimant’s stroke was not work related or at least there is no evidence it is, for unemployment insurance purposes the claimant was forced to quit working as a truck driver. The fact the claimant applied to work as a dispatcher supports the conclusion that the claimant had to quit his job as a truck driver for personal reasons. The separation for unemployment insurance purposes must be considered a quit for compelling reasons that do not qualify the claimant to receive benefits.

DECISION:

The representative's June 25, 2007 decision (reference 01) is affirmed. For unemployment insurance purposes when the claimant could not return to work as a truck driver, he quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of May 27, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

_____
Debra L. Wise
Administrative Law Judge

_____
Decision Dated and Mailed

dlw/pjs