

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L RODGER

Claimant

APPEAL NO. 09A-UI-14553-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HANSEN EGG COMPANY

Employer

OC: 09/06/09

Claimant: Appellant (5)

Section 96.4-3 – Able to and Available for Work
Section 96.5-1-d – Separation for Health Reasons

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 24, 2009, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on October 26, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Chris Foote participated in the hearing on behalf of the employer.

ISSUES:

Was the claimant able to and available for work?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as a truck driver from July 3, 2008, to August 23, 2009. He had a stroke and seizure while he was driving in Virginia and was hospitalized for three days.

The claimant's doctor has ordered that the claimant not drive for a minimum of six months because of his medical condition. The claimant and the owner of the business, Craig Hansen, mutually agreed that the claimant was unable to work due to his medical condition. The claimant did not intend to quit his job and the employer did not discharge him. The claimant's medical condition was not caused or aggravated by the claimant's employment.

The claimant has a general equivalency diploma, and his primary occupation has been as a truck driver. He has worked as a newspaper worker, mechanic, heating and air conditioning technician, and a paramedic. Since he filed for unemployment insurance benefits, the claimant has been unable to drive or perform any jobs for which the claimant is suited by training or experience.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code section 96.5-1 and 96.5-2-a.

The unemployment insurance law provides that individual is qualified to receive benefits if he: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that he needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but his regular work or comparable suitable work was not available. Iowa Code section 96.5-1-d.

Although the Agency decided that the claimant had voluntarily quit and was not eligible under Iowa Code section 96.5-1-d, I cannot conclude that the claimant's separation from employment was voluntary since it was mandated by doctor's orders and Iowa law that the claimant was not permitted to drive due to his stroke and seizure. If the employment separation was not voluntarily, Iowa Code section 96.5-1-d does not directly apply. I also cannot conclude the employer discharged the claimant since he was not told he was discharged, fired, or terminated. The claimant is not subject to disqualification based on the reasons for his termination.

Under the circumstances, the claimant could be subject to a voluntary quit disqualification in the future if he does not offer to return to work after he is fully released by his doctor. The separation could also be considered a layoff due to lack of work in the future if the claimant offers to return to work after being released, but the employer does not have work available. The issue of whether the employer's account is subject to charge then must wait until after the claimant is released to return to work. The employer must be given an opportunity to protest the claimant at the time the claimant is released and reopens his claim.

The next issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant has not been able to perform gainful full time work since he filed for unemployment insurance benefits effective September 6, 2009. The claimant is ineligible for benefits effective September 6, 2009, and continuing until the claimant establishes he is able to and available for work.

DECISION:

The unemployment insurance decision dated September 24, 2009, reference 01, is modified with no change in the outcome of the case. The claimant is ineligible for benefits effective

September 6, 2009. If circumstances have changed and the claimant believes he is eligible for benefits, he must reopen his claim and demonstrate he is able to and available for work.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs