

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY R MULLENBERG
Claimant

APPEAL NO. 09A-UI-17116-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONTRACT TRANSPORT INC
Employer

OC: 04/26/09
Claimant: Respondent (1)

Section 96.4-3 - Able to and Available for Work
Section 96.5-3-a - Failure to Accept Work
871 IAC 24.1(113)a - Layoff

STATEMENT OF THE CASE:

The employer timely appealed a quarterly statement of benefit charges issued in November 2009, that concluded benefits had been charged to the employer's account for third quarter 2009. A telephone hearing was held on December 21, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Jeane Nible participated in the hearing on behalf of the employer with witnesses, Allen Bergman and George Hardwood. Exhibit A-1 was admitted into evidence.

ISSUES:

Was the claimant laid off due to lack for work?

Was the claimant able to and available for work?

Did the claimant fail to accept an offer of work without good cause?

FINDINGS OF FACT:

The claimant worked for the employer as a truck driver from February 14, 2001, to April 28, 2009. He worked full time until March 2008 when the owner of the business requested that he drop part of his route. After that part of the route was dropped, the claimant continued to work part time about 30 hours per week on a regular route to St. Paul.

On April 28, 2009, the dispatcher informed the claimant that the St. Paul route had been given to one of the full-time drivers. The dispatcher told the claimant that the employer would call the claimant if the employer needed him to drive.

The claimant filed a new claim for unemployment insurance benefits effective April 26, 2009. The Agency mailed a decision to the employer's last- known mailing address on June 2, 2009, that concluded the claimant was laid off and was able to and available for work. The employer did not appeal that decision. The employer contacted the claimant once in June 2009 about

taking a load the next day, but the claimant had already accepted a load from another carrier and told the dispatcher he could not take the load.

The expiration date of the claimant's commercial driver's license was July 11, 2009. On June 11, 2009, the employer sent the claimant a reminder letter about renewing his license. The claimant understood that under Iowa law a driver's license, whether commercial or otherwise, remained valid for 30 days after expiration date on the license so he did not get the license renewed until August 10, 2009.

When the employer had not received a copy of the claimant's renewed driver's license by August 5, 2009, the human resources coordinator sent the claimant a letter that day indicating that his employment had been terminated.

After the employer received a quarterly statement of benefit charges that concluded benefits had been charged to the employer's account for third quarter 2009, the employer filed a timely appeal of that decision asserting that the claimant was voluntarily unavailable for work due to his expired driver's license.

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 § 96.5-1 and 96.5-2-a. On the other hand, a person who is laid off due to lack of work is qualified for benefits, if he is otherwise eligible. 871 IAC 24.1(113)a. The claimant was laid off when he was taken off his regular route and placed on call. He was not discharged from any active employment in August 2009, instead the employer informed him that he was no longer on call to drive for the company.

The employer protested the claimant's eligibility for unemployment asserting that the claimant was voluntarily unavailable for work due to his not renewing his commercial driver's license by July 11, 2009.

The Commercial Motor Vehicle Safety Act of 1986 was signed into law on October 27, 1986. The goal of the Act is to improve highway safety by ensuring that drivers of large trucks and buses are qualified to operate those vehicles and to remove unsafe and unqualified drivers from the highways. The Act retained the State's right to issue driver's licenses, but established minimum national standards that States must meet when licensing CMV drivers. 49 USC 31101 et seq. Under federal department of transportation rules, 49 CFR § 383.37: "No employer may knowingly allow, require, permit, or authorize a driver to operate a CMV in the United States:

- (a) During any period in which the driver has a CMV driver's license suspended, revoked, or canceled by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV.

The rules further provide that a driver can be disqualified for driving a CMV without a CDL in the driver's possession, but state a driver is not guilty of this offense if the person presents proof to the enforcement authority that he held a valid CDL on the date the citation was issued.

Iowa Code § 607.16(2)g states that: "A commercial driver's license is valid for 60 days after the expiration date."

The claimant remained available to drive after July 11, 2009, because his commercial driver's license was still valid up through the time he renewed it. Iowa's laws have to comply with federal commercial licensing standards or the state could be decertified from issuing commercial driver's licenses. 49 CFR § 384.405. I have no reason to believe Iowa Code § 607.16(2)g does not comply with federal commercial licensing standards.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant is not disqualified for failing to accept work in June 2009 under Iowa Code § 96.5-3-a because he had good cause to decline the load because he had accepted a load from another employer that day. The dispatcher said there were other loads offered but had no documentation regarding any of the other offers or any idea when the calls were made.

DECISION:

The quarterly statement of benefit charges issued in November 2009, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account was properly charged for benefits.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css