

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STUART NEVINS**

Claimant

**APPEAL NO: 12A-UI-03724-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHNEIDER NATIONAL CARRIERS INC**

Employer

**OC: 08/14/11**

**Claimant: Appellant (5)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Stuart Nevins (claimant) appealed an unemployment insurance decision dated March 29, 2012, reference 03, which held that he was not eligible for unemployment insurance benefits because he was not medically able to perform work with Schneider National Carriers, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 25, 2012. The claimant participated in the hearing with Attorney Dalton Kidd. The employer participated through Chris Neipert, driver business leader. The separation issues were inadvertently left off the hearing notice. Both parties waived their right to a formal notice of the issues so they could be addressed in the hearing today.

The separation occurred prior to the fact-finding interview in this case and both parties made that known in the telephone interview, but for unknown reasons the fact-finder issued a decision only addressing the able and available issues. 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:**

The issue is whether the claimant's voluntary separation was attributable to the employer or whether he was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time truck driver from January 10, 1999 through February 18, 2012. He was required to have a valid Class A Commercial Driver's License (CDL) as a requirement of his employment. In order to obtain and keep a CDL, the Department of Transportation (DOT) requires truck drivers to have a current medical card.

The claimant had been off work intermittently in 2011 due to a non-work-related medical condition. His last day of work was February 18, 2012, after which he went on vacation. The claimant's health card was going to expire on February 20, 2012 and he went home on vacation to get his health card renewed but he was not able to do so. He has congestive heart failure and atrial fibrillation; and while he is medically able and available to work, he cannot drive a commercial vehicle. After three weeks of vacation, the claimant called Chris Neipert, driver business leader, and asked Mr. Neipert to terminate him so he could get on COBRA insurance.

## **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. While a claimant is most always required to be able and available for work, when there is a final separation, it must be determined whether or not it is disqualifying. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

In the case herein, the evidence does confirm the reason the claimant is not working is due to his non-work-related medical condition, but the claimant did not say "I quit" and the employer did tell him he was fired. However, it is not necessary to go into policy considerations, since the facts are sufficient to confirm the separation is a voluntary quit. The claimant left work to go on vacation and never returned. The law presumes it is a quit without good cause attributable to the employer when an employee left to take a vacation. 871 IAC 24.25(25).

To determine a voluntary quit occurred, there must be evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant's intent to quit can be seen in his failure to return to work after being off work voluntarily. He carried out that intent by calling the employer and telling the employer to terminate him so he could get COBRA benefits.

Additionally, it could also be considered that the claimant failed to return from a leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, if the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed, the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(j)(2).

It is the claimant's burden to prove the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

**DECISION:**

The unemployment insurance decision dated March 29, 2012, reference 03, is modified with no effect. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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