

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JIMMIE WILLIAMS

Claimant

APPEAL NO. 09A-UI-10284-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEYL TRUCK LINES INC

Employer

OC: 06/04/09

Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated July 16, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 4, 2009. Claimant participated. Employer participated by Keith Pease, Director of Safety. The record consists of the testimony of Keith Pease and the testimony of Jimmie Pease. Official notice was taken of the administrative file.

ISSUES:

Whether the claimant left for good cause attributable to the employer; and
Whether the claimant has been overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is an over-the-road transportation company that provides trucking services to forty-eight states. The claimant was hired on September 11, 2007 as an over-the-road driver. The trucking industry is subject to regulation by the Department of Transportation (DOT). In order to drive a semi-truck, a driver, including the claimant, must attain a Commercial Drivers License (CDL) and pass a medical examination every two years.

On April 25, 2009, the claimant was asked to obtain a physical examination to comply with company and DOT regulations. The claimant was directed to a clinic in Lutz, Florida. Michael Murray, D.O, did the examination. He temporarily disqualified the claimant from driving. The claimant did not pass the eye examination and there were concerns about the claimant's blood pressure and blood sugar. Because the claimant had been disqualified medically, he could no longer legally operate a semi-truck. The claimant was discharged by the employer for this reason.

Federal regulations require that an individual who is medically disqualified must return to the same physician for any re-examination. The only exception is if the original physician refers the claimant to another physician. The claimant has never returned to Dr. Murray for a follow up examination. He has seen his own personal physician and has passed the test. Until the claimant is re-qualified by Dr. Murray or a physician on referral from Dr. Murray, the claimant is not eligible for rehire by the employer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a.

The claimant knew that in order to operate a semi-truck he had to have a valid CDL and pass a physical examination. These are requirements imposed by the DOT and the employer. The claimant was disqualified following a medical examination on April 25, 2009. In other words, he was no longer eligible to work for the employer as a truck driver. For unemployment insurance purposes, the claimant is considered to have quit without good cause attributable to the employer. He is not qualified to receive unemployment insurance benefits.

The representative's decision indicated that the claimant had been discharged for alleged misconduct. This is not correct. The claimant was not discharged for misconduct and the employer does not allege misconduct. The reason that the claimant is being denied unemployment insurance benefits is because he has been disqualified medically and he has not taken the necessary steps to remedy that disqualification. As indicated above, this situation is considered a voluntary quit without good cause attributable to the employer.

The next issue is overpayment of benefits. Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

This matter is remanded to the Claims Section for determination of an overpayment.

DECISION:

The decision of the representative dated July 16, 2009, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The matter is remanded to the Claims Section for determination of any overpayment.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css