

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

F D HEMRY
633 OLD COLUMBIA RIV
TROUTDALE OR 97060

HEYL TRUCK LINES INC
PO BOX 500
AKRON IA 51001

Appeal Number: 04A-UI-11684-HT
OC: 10/10/04 R: 12
Claimant: Respondent (2-R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-d – Quit/Medical
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Heyl Truck Lines, Inc. (Heyl), filed an appeal from a decision dated October 28, 2004, reference 01. The decision allowed benefits to the claimant, F.D. Hemry. After due notice was issued a hearing was held by telephone conference call on November 23, 2004. The claimant participated on his own behalf. The employer participated by Director of Safety Keith Pease.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: F.D. Hemry was employed by Heyl from April 19, 2001 until September 27, 2004. He was a full-time over-the-road truck driver in the state of Oregon.

Mr. Hemry had undergone heart surgery in 2001 and been released to return to work without restrictions. However, he developed respiratory problems and his doctor told him he should not do long-distance driving. He should not be out on the road and out during the winter. Mr. Hemry finds himself short of breath just getting out of the truck and walking to the warehouse. This is not the result of anything work-related, he would have had the same difficulties regardless of where he worked due to his heart problems.

The claimant can drive short distances but when he asked Director of Safety Keith Pease, Heyl has no short-haul driving positions in the claimant's area of residence. There were no openings elsewhere within the company at the time the claimant quit, but, if there had been, Mr. Hemry would have had to relocate to another state. The claimant notified Mr. Pease he was quitting because his doctor said he could no longer drive long distances.

F.D. Hemry has received unemployment benefits since filing a claim with an effective date of October 10, 2004.

The issue of whether the claimant is able and available for work has not been determined.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

Iowa Code section 96.5-1-d provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the 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, if so found by the department, provided the individual is otherwise eligible.

The claimant quit because of medical problems not caused or aggravated by the employment. Regardless of the work he had been doing, the heart and breathing problems would have occurred. Although his doctor did recommend he find another job, it is not the fault of the employer as in Raffety v. IESC, 76 N.W.2d 787 (Iowa 1956). The claimant's resignation was not for good cause attributable to the employer and he is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 28, 2004, reference 01, is reversed. F.D. Hemry is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,860.00.

The issue of whether the claimant is able and available for work is remanded to the Claims Section for determination.

bgh/tjc