

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANCIS ROSSI

Claimant

APPEAL NO: 14A-UI-01128-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 12/22/13

Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit
871 IAC 24.26(6)a – Non-Job Related Illness
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 28, 2014, reference 01, that held he voluntarily quit employment without good cause due to a non-job related illness or injury on November 27, 2013, and benefits are denied. A telephone hearing was held on February 20, 2014. The claimant participated. The employer did not participate.

ISSUES:

Whether the claimant voluntarily quit with good cause attributable to the employer.

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant worked for the employer as a full-time CDL over-the-road driver from January 1, 2013 to November 27, 2013. The claimant suffered a bronchial issue that resulted in an over-night hospitalization in September 2013. The doctor concluded the health issue was related to claimant breathing exhaust fumes from his truck. Claimant has a sleep birth in his truck that he uses when on the road. As the weather turns colder, he uses the birth for sleep periods.

When the claimant complained to the employer, the truck was brought in for service. The truck had a faulty muffler that was causing the fumes to build-up in the cab.

In October claimant had another bronchial health issue with truck fumes and was hospitalized for several days. His doctor advised he should seek other employment. He was released and he returned to work. Just before Thanksgiving, claimant was hospitalized for four days due to bronchial health issues. He notified dispatch he was resigning due to health reasons.

Claimant has a current CDL with a medical certificate. He is looking for further employment. The employer failed to respond to the hearing notice, and there is no record of an employer call recorded on UI Appeals C2T control system.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 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.

871 IAC 24.26(6)a provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The administrative law judge concludes claimant voluntarily quit employment with good cause attributable to the employer due to a job related illness when he separated from employment on November 27, 2013.

Claimant suffered three hospitalizations from October through November due to a bronchial health issue related to his extraordinary exposure to exhaust fumes from employer trucks. Two doctors advised claimant to look for other employment. He notified the employer of his health issue and though the employer attempted to resolve it, it was without success. Claimant quit rather than risk serious health due to the ongoing truck fume ingestion problem.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes claimant meets the availability requirements of the law as of December 22, 2013.

He has a current CDL with medical certificate that allows him to drive truck. He was released from his November 2013 hospitalization without restriction.

DECISION:

The department decision dated January 28, 2014, reference 01, is reversed. The claimant voluntarily quit with good cause attributable to the employer due to a job related illness on November 27, 2013. The claimant is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs