

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBY L WILLIAMSON
Claimant

APPEAL NO: 09A-UI-14988-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 08/30/09
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
871 IAC 24.26(6)a – Non-Job-Related Injury/Recovery

STATEMENT OF THE CASE:

The employer appealed a department decision dated October 1, 2009, reference 01, that held the claimant voluntarily quit employment with good cause due to a non-job-related injury or illness on August 5, 2009, and benefits are allowed. A telephone hearing was scheduled and held on November 5, 2009. The claimant participated. Dave Dalmasso, HR Director, participated for the employer.

ISSUE:

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time over-the-road driver from December 20, 2006 to June 26, 2009. The claimant suffered abdominal pain after returning from a trip on July 14, 2009, and he went to see a doctor. After an examination, the claimant required surgery, and he requested leave from his employment. The employer granted FMLA for the remaining three weeks available from July 17 to August 5, 2009.

Toward the end of the leave period, the claimant suffered a further medical issue that required hospitalization and treatment. The claimant received a restricted release to return to work with “no heavy lifting.” The employer driver manual provides that drivers must be able to lift from 5 to 100 pounds in order to load trailers. The employer terminated the claimant’s employment on August 5, 2009, because he had not received an unrestricted release to return to work.

The claimant has received an unrestricted release to work, and he is actively searching for work at this time.

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 that the claimant voluntarily quit employment with good cause attributable to the employer due to a non-job-related illness when he separated from employment on July 17, 2009, and the employer terminated his employment when he had not received an unrestricted medical release to work when his leave expired on August 5t

While the employer is not obligated to grant the claimant an extended leave of absence, it is required to give the claimant an opportunity to recover from the injury and return to work. The employer decision to terminate on August 5, did not give him the opportunity to provide the unrestricted release to return to work that he later obtained.

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 claimant has received an unrestricted work release and he is able and available for work.

DECISION:

The department decision dated October 1, 2009, reference 01, is affirmed. The claimant voluntarily quit with good cause attributable to the employer due to a non-job-related illness when he was terminated on August 5, 2009 prior to full recovery during his leave of absence. The claimant is able and available for work effective August 30, 2009, and is entitled to benefits, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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