IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

FRED F HOUSER
Claimant

DECKER TRUCK LINE INC
Employer

APPEAL NO. 11A-UI-10295-VST

ADMINISTRATIVE LAW JUDGE DECISION

OC:07/10/11
Claimant: Appellant (2-R)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated August 1, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 29, 2011. The employer participated by Brenda McNealey, director of human resources, and Andrea Kloberdanz, benefits administrator. The employer was represented by Jenny Smith, attorney at law. The claimant did not respond to the hearing notice and did not participate. The record consists of the testimony of Brenda McNealey; the testimony of Andrea Kloberdanz; and Employer's Exhibits 1 through 18.

ISSUE:

Whether the claimant was separated from his employment for any disqualifying reason.

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 is a transportation logistics company. The claimant was hired on April 8, 1999, as a full-time over-the-road driver. His last day of work was April 13, 2011. He was terminated by the employer on July 7, 2011.

On April 14, 2011, the claimant called the employer to report that he was having trouble driving. He was experiencing dizziness and blurry vision. The claimant could not operate a semi truck with these symptoms. The employer sent another driver to pick up the claimant and the truck and return him to the Fort Dodge, Iowa, terminal.

The claimant consulted his family physician and informed the employer on April 22, 2011, that a CT scan had been done and showed a possible brain tumor or multiple sclerosis. The claimant had an appointment with a neurologist on May 24, 2011. The employer informed the claimant that since he would be off work indefinitely, Family Medical Leave Act (FMLA) paperwork would be sent. The claimant's FMLA leave began on April 14, 2011. (Exhibit 5) The claimant was eligible for the full 12 weeks. The projected end of his FMLA leave was July 7, 2011. The claimant was also advised that if he could not return to work by July 7, 2011, he would be terminated.

On May 24, 2011, the claimant informed the employer that he had been released to return to work by his neurologist. The claimant was informed that the employer's doctor had to review all treatment notes before the claimant could be returned to work. On June 9, 2011, the claimant said that his neurologist wanted another CT scan and there was discussion that the company doctor needed a full release from the neurologist. On July 1, 2011, the claimant told the employer that his family physician would be faxing over medical records, including the neurologist's release. The medical records were never received by the company doctor on July 7, 2011. The claimant was terminated on July 7, 2011.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

Iowa Code section 96.5-2-a provides:

> An individual shall be disqualified for benefits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
>
> a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
>
> a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

871 IAC 24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The first issue in this case is whether the claimant was separated from his employment for any disqualifying reason. The representative ruled that the claimant was discharged for misconduct and identified the misconduct as failure to follow instructions in the performance of the job. This is clearly erroneous. The evidence in this case established that the claimant was terminated at the expiration of FMLA leave on July 7, 2011. His termination had nothing to do with the performance of his job.

Separations from employment for health-related reasons are among the most difficult cases in unemployment insurance compensation. The case is further complicated by the fact that the claimant did not participate in the hearing. When determining whether a separation of employment constitutes a voluntary quit or misconduct, the focus of the analysis is on which party initiated the separation of employment. In this case, the employer initiated the separation of employment. When an employer initiates the separation of employment, the claimant is not deemed to have voluntarily quit. The employer's own notes show that the claimant was eager to return to work and was terminated because either he or his doctor did not get the paperwork in on time. The uncertainty over the claimant's ability to return to work and a paperwork delay are not disqualifying misconduct.

The claimant established his claim for benefits on July 10, 2011. Because there was a separation of employment for health-related reasons, the able and available issue is present. This issue was not listed as an issue for hearing and the administrative law judge could not decide the issue, because the claimant was not present for the hearing. The case is therefore remanded to the Claims Section to determine if the claimant was able and available for work as of July 10, 2011.

DECISION:

The representative's decision dated August 1, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible. This matter is remanded to the Claims Section to determine whether the claimant is able and available for work.

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Vicki L. Seeck
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw