

**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**

**DENNIS L PENNINGTON  
561 PINETUCKY RD  
NAUVOO AL 35578-5337**

**HEARTLAND EXPRESS INC OF IOWA  
2777 HEARTLAND DR  
CORALVILLE IA 52241**

**Appeal Number: 06A-UI-06573-LT  
OC: 05-21-06 R: 12  
Claimant: Appellant (4)**

**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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury  
Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the June 20, 2006, reference 01, decision that denied benefits because of a discharge from employment. After due notice was issued, a hearing was held on July 17, 2006. Claimant participated. Employer participated through Lea Kahrs. The issue is whether claimant's separation was with good cause attributable to the employer. Claimant's Exhibit A (pages 1 through 4) and B (tape recording) were received. The administrative law judge took judicial notice of the administrative record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time over-the-road driver through November 16, 2005 when he was

unable to pass his DOT physical for the commercial driver's license (CDL) as of November 24, 2005. He was unable to work for a period of time until he passed his physical on or about January 21, 2006. (Claimant's Exhibit A) On June 28, 2006 he contacted Shane in recruiting department who transferred him to Chad who told claimant Heartland would not hire him back. (Claimant's Exhibit B)

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no work was available to the claimant after his release to return to work from a non-work related illness.

Iowa Code § 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.

Iowa Code § 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.

871 IAC 24.26(6)b provides:

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

b. 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.

His inability to pass the DOT physical for medical reasons was not misconduct and there was not a discharge from employment. However, claimant's return to the employer to offer services after the medical recovery evinces an intention to continue working. Therefore, the separation was attributable to a lack of work by the employer at the point where claimant returned and offered his services on June 28, 2006. Benefits are allowed.

DECISION:

The June 20, 2006, reference 01, decision is modified in favor of the appellant. Claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible effective June 25, 2006.

dml/pjs