

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACK E ADKINS

Claimant

APPEAL NO. 08A-UI-10373-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

**OC: 09/21/08 R: 12
Claimant: Respondent (5)**

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.22(2)j – Leave of Absence
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Heartland Express Inc. of Iowa (employer) appealed a representative's November 3, 2008 decision (reference 01) that concluded Jack E. Adkins (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 20, 2008. The claimant participated in the hearing. Lea Peters appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 29, 2004. He worked full time as an over-the-road truck driver in the employer's trucking business. His last day of work was July 10, 2008.

The claimant had previously used eight weeks of his FMLA (Family Medical Leave) eligibility. He had prostate surgery and treatment for cancer, for which his doctor directed he remain off work. As a result, he exhausted his remaining FMLA as of August 6. The employer gave the claimant an additional 15 days of leave, but the claimant still had not been released to return to work by his doctor by the end of the leave on August 21. As a result of the claimant's inability to return to work at the end of the leave, the employer sent a letter to the claimant advising him that his employment was ended, but that he could seek reemployment after he was released by his doctor.

The claimant was given a full release by his doctor on September 18 with no restrictions. The claimant faxed this to the employer and sought reemployment. However, on about September 19 the employer's recruitment director advised the claimant there was currently no work available to him. The recruitment director reinforced this when the claimant recontacted him about a month later. As a result of the employer not reemploying him upon his release from medical care, the claimant established an unemployment insurance benefit claim year effective September 21, 2008.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if the end of the leave of absence the employer fails to reemploy the employee, the employee is considered laid off and eligible for benefits; and conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed, the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

Here, the claimant failed to return at the end of the leave of absence, and is therefore deemed to have voluntarily quit the employment. The claimant therefore has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code §96.6-2. Where the quit is for medical or health reasons, the quit is disqualifying at least until the claimant has recovered and seeks to return to work unless the medical or health issue is attributable to the employer. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b.

Where a claimant has been compelled to leave employment due to a medical or health issue not caused or aggravated by the work environment, the claimant is not eligible to receive unemployment insurance benefits until or unless the claimant then recovers, is released to return to work by his physician, and in fact does attempt to return to work with the employer. 871 IAC 24.25(35). Here, the claimant was released to return to work; he did seek to return to work with the employer, but his position was no longer available to him. “Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Even though the employer may have had a good business reason for proceeding to fill the claimant's position and declining to reemploy him when he sought to return to work, as of September 21, 2008 the separation is with good cause attributable to the employer and benefits are allowed.

DECISION:

The representative's November 3, 2008 decision (reference 01) is modified with no effect on the parties. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, if the claimant is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw