

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES A GREGORICH**  
Claimant

**APPEAL NO. 12A-UI-04111-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RA-LY TRANSPORT LLC**  
Employer

**OC: 02/19/12**  
**Claimant: Appellant (5)**

Section 96.5(1)(d) – Voluntary Quit

**STATEMENT OF THE CASE:**

James Gregorich filed a timely appeal from the April 9, 2012, reference 02, decision that denied benefits in connection with a voluntary quit. After due notice was issued, a hearing was held on May 4, 2012. Mr. Gregorich participated. Randy Schilt represented the employer. Exhibit A was received into evidence.

**ISSUE:**

Whether Mr. Gregorich separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: James Gregorich was employed by Ra-Ly Transport, L.L.C., as a part-time truck driver from 2007 and last performed work for the employer on March 15, 2012. The employer hauls bulk milk to be processed. The employer's business is seasonal. Demand for the employer's product was unusually slow during the most recent winter. Mr. Gregorich had filed a claim for unemployment insurance benefits that was effective February 19, 2012 due to the decrease in the number of loads the employer had for him. The employer serves Iowa, Minnesota, Illinois, Nebraska, Wisconsin, and a portion of Missouri. Mr. Gregorich had started out in the employment hauling to several states, but eventually limited himself to hauling just to Illinois, because that state had smoother roads that were easier on his back. The employer continued to have loads for areas other than Illinois, but Mr. Gregorich was not available to haul loads other than those heading for Illinois.

On March 26, 2012, the employer notified Mr. Gregorich that the employer had a load for Mr. Gregorich to take to Illinois on March 28, 2012. At the time the employer called with the available load, Mr. Gregorich was experiencing problems with his hip and back. Mr. Gregorich has a history of back problems and, due to a lack of insurance, gets evaluation and treatment primarily through a chiropractor.

On March 27, Mr. Gregorich notified the employer that he could not accept that load to Illinois due to his hip and back problems. Mr. Gregorich was waiting to get in to see his chiropractor and was concerned he would not be able to get the load to its destination in time. Mr. Gregorich had previously notified the employer that he was going to quit the employment effective April 1, 2012. Mr. Gregorich was in the process of selling his house and wanted a few weeks to fix it up. On March 27, 2012, Mr. Gregorich told the employer that he was going to go ahead and end his employment at that time. No doctor had advised Mr. Gregorich to leave the employment.

This employer was Mr. Gregorich's sole base period employer.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

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.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job. In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that

the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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.

The evidence in the record indicates that Mr. Gregorich voluntarily quit the employment on March 27, 2012 for personal reasons and not for good cause attributable to the employer. The evidence indicates that Mr. Gregorich's quit was based, in part, on his desire to have time to work on his house and, in part, on his chronic, non-work-related health issues. While Mr. Gregorich did indeed have chronic back issues, no doctor advised him to leave the employment. The weight of the evidence indicates that while the number of loads to Illinois had decreased, the employer continued to have loads to other areas, but Mr. Gregorich was not available for those other loads.

Because Mr. Gregorich voluntarily quit the employment without good cause attributable to the employer, and because this employer was the sole base period employer, Mr. Gregorich is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Gregorich.

**DECISION:**

The Agency representative's April 9, 2012, reference 02, decision is modified only to correct the date of the separation to March 27, 2012. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw