

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM A BERNER
Claimant

Z LINE LTD
Employer

APPEAL 15A-UI-05148-KC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available – Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.22(1) – Able to Work – illness, injury or pregnancy
Iowa Admin. Code r. 871-24.23(35) – Availability Disqualifications

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 23, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 5, 2015. The claimant participated. The employer participated through Randy Zimmerman, president of Z-Line Ltd.

ISSUES:

Was the claimant discharged for disqualifying, work-related misconduct?
Did the claimant voluntarily quit employment without good cause attributable to the employer?
Was the claimant able and available for work?

FINDINGS OF FACT:

The relevant evidence is undisputed. Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a truck-driver from August 11, 2014 until September 25, 2014, when he was separated from employment.

On September 25, 2014, the claimant sustained a work-related physical injury when he was checking his truck and anti-freeze fluid splashed into one of his eyes. He flushed his eyes with water and resumed his delivery. The claimant immediately told Zimmerman about the accident. The following day he awakened to blindness in his right eye. He called Zimmerman at 7:00 a.m. on September 26, 2014 and reported his condition. Zimmerman told him to go to a physician immediately. The claimant was examined by a general practitioner and an eye surgeon that day. After his examinations, the claimant told Zimmerman that he did not know if the blindness would be permanent. Zimmerman reported the accident to the Commissioner of Workers' Compensation. On October 10, 2015, the claimant's physician advised that the claimant was

blind in his right eye and if any vision returned it would not be useful. The claimant told the employer of his prognosis.

A workers' compensation claim was filed. The claimant received workers' compensation benefits for the period of September 25, 2014 until on or about December 2, 2014. A workers' compensation settlement was reached in December 2014.

The workers' compensation documentation from December 2, 2014, indicated the claimant could not drive a commercial truck. Zimmerman reviewed the physician's reports and decided that the claimant's visual loss in one eye meant the claimant was not medically qualified to drive for the trucking firm under Department of Transportation (DOT) regulations. The claimant could not drive a commercial truck unless the Federal Motor Carriers Safety Administration (FMSCA) granted the claimant a vision waiver to drive. The claimant did not submit such a waiver to the employer. The claimant did not attempt to obtain this waiver because he knew it would be a futile effort. The claimant was certain that he would not qualify for the waiver. In December 2014, the claimant could not pass the requisite DOT physical. On December 2, 2014, the claimant was released by David Ball, M.D., to work with the limitation of vision loss in one eye. The employer had no other jobs for which the claimant was qualified. The claimant's work experience is limited to commercial truck-driving.

After the injury, the claimant sought dock-working employment out of state. At the time of the hearing, the claimant had very recently become employed as a dock-worker in Nebraska.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective September 25, 2014. Benefits are denied.

Iowa Code § 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".

Iowa Admin. Code r. 871-24.22(1)a and (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The evidence presented clearly established that the claimant was not able to work and was not available for the truck driving work he performed for this employer. He could not qualify for his basic job duty, driving a commercial truck. Benefits are denied.

DECISION:

The April 23, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work for this employer effective September 25, 2014. Benefits are denied.

Emily Gould Chafa on behalf of Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

ec/kc/pjs