

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRY D PRENTICE**  
Claimant

**APPEAL NO. 07A-UI-09102-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BARGMAN INC**  
Employer

**OC: 08/26/07 R: 02**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Bargman, Inc. (employer) appealed a representative's September 18, 2007 decision (reference 01) that concluded Terry D. Prentice (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 9, 2007. The claimant participated in the hearing. Jay Bargman, the owner, and Missy Hall, the office manager/bookkeeper, 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:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant began working for the employer in November 2004. To obtain his medical certificate to drive, the claimant was examined by a chiropractor. At the time of this examination, the claimant controlled his diabetes with prescribed medication. The claimant has been diagnosed as having diabetes for 42 years. He tests his blood sugar level everyday. If his blood sugar is too high, the claimant takes insulin. Otherwise, the claimant takes prescribed medication to control his blood sugar. The employer did not know the claimant had diabetes or controlled his diabetes by taking a combination of prescribed medication and insulin.

In late May 2007, Bargman found the claimant incoherent. After finding the claimant in this state, the claimant was examined by a physician. The physician told the claimant he was insulin dependent and was no longer capable of driving a truck. Federal DOT regulations do not allow

people who are insulin dependent to be medically certified to drive or operate a vehicle under a commercial driver's license.

The claimant informed the employer on May 31, 2007, that the doctor told him he could no longer drive because he was insulin dependent. The employer initially indicated the claimant was hired as a driver and the employer did not have any more work for the claimant to do. Sometime after May 31, the employer attempted to contact the claimant to offer him farm work. The claimant did not return the employer's calls. The employer also wanted to tell the claimant about the Federal Diabetes Exemption Program that he could go through. The program required the claimant to have several doctor's appointments and there was no guarantee he would be allowed to drive after going through the program.

The claimant established a claim for unemployment insurance benefits during the week of August 26, 2007. Since then, he has been looking for warehouse work. The claimant does not have a commercial driver's license and is not able to work as a truck driver any more. The claimant has experience as a warehouse worker.

The claimant filed claims for the weeks ending September 1 through 29, 2007. The claimant received his maximum weekly benefit amount of \$347.00 for each of these weeks.

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

Three provisions of the unemployment insurance law disqualify claimants until they have been reemployed and have been paid wages for insured work equal to ten times their weekly benefit amount. An individual is subject to such a disqualification if the individual (1) is discharged for work-connected misconduct (Iowa Code § 96.5-2-a), (2) fails to accept suitable work without good cause (Iowa Code § 96.5-3), or (3) "has left work voluntarily without good cause attributable to the individual's employer." (Iowa Code § 96.5-1).

Iowa Code § 96.5-1-d provides that an individual who is subject to disqualification under Iowa Code § 96.5-1 is not disqualified:

If the individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of 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.

The rule implementing Iowa Code § 96.5-1-d explains that "[r]ecovery is defined as the ability of the claimant to perform all of the duties of the previous employment." 871 IAC 24.26(6)a.

The issue then is whether a person is subject to voluntary quit disqualification under Iowa Code § 96.5-1 under the following circumstances. The person is actively working but then is diagnosed with a medical condition that disqualifies him from performing his normal job duties under DOT standards and the employer determines there is no work available for him with those restrictions. The person never states he is quitting employment. The employer has not formally discharged the claimant from employment but has stated that the employee cannot return to work until he meets the DOT medical standards.

The problem is that the case law points in several directions and has not addressed this issue head on. Additionally, the statute and rules are unclear as to this issue. For example, in Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989), the Iowa Supreme Court considered the case of a pregnant certified nursing assistant (CNA) who went to her employer with a physician's release that limited her to lifting no more than 25 pounds. Wills filed a claim for benefits because the employer would not let her return to work because of its policy of never providing light-duty work. The court ruled that Wills became unemployed involuntarily and was able to work because the weight restriction did not preclude her from performing other jobs available in the labor market. Id. at 138. The court characterized the separation from employment as a termination by the employer, but in essence the employer informed the claimant that it did not have any jobs available meeting her restrictions and would not create a job to accommodate her restrictions.

On the other hand, in White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992), the Iowa Supreme Court considered the case of the truck driver who was off work due to a heart attack for about three months, returned to work for a month, and then was off work for seven months after a second heart attack. He then returned to his place of employment and informed management that his doctor had instructed him that he was unable to drive because of his pacemaker device. The employer told the claimant that there was no available work for him with his restriction. The claimant then applied for unemployment insurance benefits. Id. at 343. The facts did not indicate whether the claimant stated he was quitting employment or intended to permanently sever the employment relationship at any point. In White, the court reversed the district court's decision that the claimant quit work involuntarily due to a physical disability and stated that "unemployment due to illness raises policy considerations which call for a continuation of the rules laid out in cases antedating [the cases relied on by the district court] ... Under these rules, if White's disability was not work-related, the agency properly imposed the disqualification. If, however, the cause of White's disability was work related, the disqualification was improper." Id. at 345. The court decided there had been no finding as to whether the disability was or was not work-related and remanded the case.

In my judgment, the facts of the White case more closely resemble this case. The claimant was actively employed until May 31, when he told the employer he was no longer capable of driving because he was insulin dependent. If a claimant decides they no longer meet the physical standards required by the job and leaves employment, it should be treated a quit and benefits will only be awarded if the person meets the exceptions to the voluntary quit statute. Under the facts of this case, the claimant quit his employment for reasons that are not work-related. The claimant did not meet the exceptions to the voluntary quit statute. Therefore, as of August 26, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If the claimant's employment separation qualified him to receive unemployment insurance benefits, the unemployment insurance rules provide that a person must be physically able to work (Iowa Code § 96.4-3), not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that requires commercial driving. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and the claimant has been activity looking for such work in compliance with the requirements of the law.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. Based on the claimant's employment separation, he is not

legally entitled to receive benefits for the weeks ending September 1 through 29, 2007. The claimant has been overpaid \$1,735.00 in benefits he received for these weeks.

**DECISION:**

The representative's September 18, 2007 decision (reference 01) is reversed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of August 26, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending September 1 through 29, 2007. The claimant has been overpaid and must repay a total of \$1,735.00 in benefits he received for these weeks.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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