

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARYL G CARTER
Claimant

APPEAL NO. 07A-UI-09828-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCMULLEN BROTHERS INC
Employer

**OC: 09/09/07 R: 01
Claimant: Appellant (1)R**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Daryl Carter (claimant) appealed a representative's October 16, 2007 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with McMullen Brothers (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 30, 2007. The claimant participated personally and through Elmira Dillard, his friend. The employer was represented by Alyce Smolsky, Employer Representative, and participated by Marty McMullen, Owner, and Bruce Beutler, Recruiter.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 25, 2006, as a full-time over-the-road truck driver assigned to drive for R & M Carriers. The claimant often told the carrier's dispatcher if he would be absent and less frequently informed the employer. The claimant requested advances on his paychecks from the employer and knew how to reach them by telephone.

The claimant was hospitalized from August 3 through 31, 2007, for depression. The claimant notified the carrier. The employer was unaware of the claimant's situation and tried to reach the claimant by telephone but the claimant did not return the calls. On or about September 4, 2007, the employer collected the truck from the claimant's residence. That same day the claimant contacted the employer. The carrier told the employer it did not want the claimant to drive for them in the future due to the absence. On September 17, 2007, the employer offered the claimant work with another carrier but the claimant refused stating he was thinking of going to school. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant voluntarily quit work without good cause attributable to the employer.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982).

The claimant left work due to an injury under the advice of his physician. The employer did not consent to his leaving. The claimant has failed to provide the employer with certification that he has recovered. In addition the claimant has failed to offer his services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits. The claimant may requalify by returning to the employer with an unconditional release and offer his services. The claimant could then receive benefits if regular work or comparable suitable work was not available.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes he is not.

871 IAC 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness he is considered to be unavailable for work. The claimant was in the hospital from August 3 through 31, 2007. He is considered to be unavailable for work from August 3, through 31, 2007. The claimant is

disqualified from receiving unemployment insurance benefits for that period due to his unavailability for work.

The issue of whether the claimant refused an offer of suitable work is remanded for determination.

DECISION:

The representative's October 16, 2007 decision (reference 02) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The issue of whether the claimant refused an offer of suitable work is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs