IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAMES T TAYLOR
Claimant

FRED'S TOWING INC
Employer

APPEAL NO. 13A-UI-12948-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/27/13
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

James Taylor filed a timely appeal from the November 15, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 11, 2013. Mr. Taylor participated personally and was represented by Attorney Robert Rosenstiel. Don Giammetta represented the employer and presented additional testimony through Gene Krabbanhoft. Claimant's Exhibits One through Twelve were received into evidence.

ISSUE:

Whether Mr. Taylor 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 Taylor was employed by Fred's Towing, Inc., as a full-time tow truck driver. The employer is open 24 hours a day seven days a week. Mr. Taylor's work hours were 4:00 p.m. to 8:00 a.m., Tuesday, Wednesday and Thursday. Mr. Taylor would start a weekend shift at 4:00 p.m. on Friday. Mr. Taylor's supervisor was Don Giammetta, President. Mr. Taylor started the employment in March 2013 and last performed work for the employer on October 9, 2013.

In May 2013, Mr. Taylor suffered a foot injury in connection with the course of performing his work duties. Mr. Taylor was initially off work for about three weeks in connection with the injury. Mr. Taylor returned to work for three days and then a doctor again took him off work. Mr. Taylor continued off work in connection with the foot injury until he returned to work without restrictions on August 12, 2013. The employer's worker's compensation carrier facilitated the medical evaluation and treatment that Mr. Taylor received. Mr. Taylor thereafter continued to perform his regular duties until about October 8, 2013.

On September 28, 2013, Mr. Taylor was involved a motor vehicle accident with the employer's truck. Mr. Taylor swerved to avoid a car. The employer's truck jumped a curb in the area of a drainage grate. The collision pushed the front axle backwards. Mr. Taylor's head hit the headliner of the truck. Mr. Taylor did not report an injury to the employer in connection with that

incident until about October 8, 2013. On September 28, 2013, Mr. Taylor and another driver had fixed the employer's truck and then Mr. Taylor had gone back to performing his duties. Mr. Taylor did not report the accident to Mr. Giammetta, but Mr. Giammetta learned of the accident from the dispatcher and another driver. Mr. Giammetta spoke to Mr. Taylor about the matter within a couple days of the incident and Mr. Taylor denied any injuries at the time.

On or about October 9, 2013, Mr. Taylor's spouse notified the employer that Mr. Taylor would be gone from work because he needed to go to the hospital. Shortly after that contact, Mr. Giammetta contacted Mr. Taylor. At that time, Mr. Taylor told Mr. Giammetta that he was experiencing pain in his shoulder that related to the injury on September 28, 2013. Mr. Taylor told the employer that sometimes such things take time to show up. Mr. Taylor continued off work. The employer's worker's compensation carrier facilitated the medical evaluation and treatment that Mr. Taylor received.

On October 23, 2013, the doctor who had been treating Mr. Taylor, Dr. Garrels, released Mr. Taylor to return to work without restrictions. Mr. Taylor erroneously asserts that Dr. Garrels referred him for "a work comp follow-up" as part of releasing Mr. Taylor to return to work. The medical release indicates instead that Dr. Garrels had followed up with the worker's compensation carrier as part of the services he had provided to Mr. Taylor.

On October 23, 2013, Mr. Taylor went to the workplace at 2:00 p.m., two hours before his regular start time, and delivered the medical release to Don Giammetta. Mr. Giammetta made it clear that the employer had work for Mr. Taylor. Mr. Taylor told Mr. Giammetta that though the doctor had released him to return to work without restrictions he did not feel 100 percent and was not ready to return to work. Mr. Giammetta told Mr. Taylor that was something that Mr. Taylor would need to take up with the worker's compensation carrier. Contrary to Mr. Taylor's assertion, there was no heated exchange between himself and Mr. Giammetta on that day. The employer's third-party accountant and another employee were present for the civil conversation that took place between Mr. Taylor and Mr. Giammetta.

Though the employer had work available for Mr. Taylor on October 23, 2013, Mr. Taylor did not return to work that day. Instead, Mr. Taylor consulted another doctor. That doctor said he would not second-guess Dr. Garrels' decision to release Mr. Taylor to return to work without restrictions. Mr. Taylor did not then report for work or report this information back to the employer. Instead, Mr. Taylor contacted his attorney, Robert Rosenstiel, and made the erroneous assertion to his attorney that the employer would not allow him to return to work until after he spoke with the worker's compensation carrier and until after the worker's compensation carrier approved his return to work. This set Mr. Taylor's attorney on a course of trying to make contact with the worker's compensation representative. Mr. Taylor's attorney ultimately heard from an attorney the worker's compensation carrier had hired to represent it in its dealings with Mr. Taylor, Cory Abbas. On October 30, attorney Abbas told attorney Rosenstiel that he believed the employer was in the process of terminating the employment. Mr. Rosenstiel indicated that he would have Mr. Taylor report for work.

At 4:48 p.m. on October 30, 2013, Mr. Taylor appeared at the workplace and requested to go to work. While the employer's business is a 24/7 operation, the employer's office hours end at 4:00 p.m. A staff person contacted Mr. Giammetta to let him know that Mr. Taylor had appeared and requested to go to work. Mr. Giammetta directed the staff person to tell Mr. Taylor to come speak with Mr. Giammetta the following morning. When Mr. Taylor appeared on October 31, 2013, to speak with Mr. Giammetta, Mr. Giammetta told Mr. Taylor that he deemed Mr. Taylor to have voluntarily quit by being absent two days without notifying the employer in violation of the employer's written no-call/no-show policy. The policy was in the 14-page handbook that

employer had Mr. Taylor read cover to cover at the start of his employment. After the absence on October 23, 2013, Mr. Taylor had been absent for shifts on October 24, 25, 26 and 27, 2013 without notifying the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 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.

871 IAC 24.25(4) provides:

> Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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. Taylor voluntarily quit the employment by being absent from the employment for three or more shifts without notifying the employer in violation of the employer's written policy. The evidence indicates that Mr. Taylor has been released by a doctor to return to work without restrictions as of October 23, 2013. Mr. Taylor consulted a second doctor, who declined to second-guess the full-medical release. The evidence indicates that the employer made clear to Mr. Taylor on October 23, 2013 that the employer had work for Mr. Taylor that day. Mr. Taylor declined to return to work at that time. The weight of the evidence fails to support Mr. Taylor's assertion that the employer turned him away and refused to return him to work until the worker's compensation carrier cleared him to return. The weight of the evidence indicates that there was no medical basis for Mr. Taylor's refusal to return to work on October 23, 2013. Thus, any absence on or after October 23, 2013 was an unexcused absence. The weight of the evidence also indicates that Mr. Taylor misrepresented the October 23, 2013 contact with the employer when he consulted his attorney that day.

Mr. Taylor voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Taylor 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. The employer's account will not be charged for benefits.

DECISION:

The Agency representatives November 15, 2013, reference 01, decision is affirmed. 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

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