

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY S BRADY

Claimant

APPEAL NO: 10A-UI-09245-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 05/30/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.5-1-d – Employment due to Injury
Section 96.4-3 – Able and Available
871 IAC 24.23(1) – Unable to Work/Injury or Illness

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 23, 2010, reference 01, that held she voluntarily quit without good cause on June 23, 2010, and benefits are denied. A telephone hearing was held on August 13, 2010. The claimant, her mother, Judy Goins, and boyfriend, Robert Greer, participated. Lea Peters, HR Generalist, participated for the employer.

ISSUES:

Whether the claimant was discharged for misconduct in connection with employment.

Whether the claimant voluntarily quit without good cause attributable to the employer.

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time over-the-road driver on December 10, 2008, and last worked for the employer on February 24, 2010. The claimant had a partial hysterectomy in December 2009, and she returned to work when released by her doctor. On February 24 near Dalton, Georgia, the claimant was pulling some tandems when she experienced some abdominal pain. A short time later, the claimant went to the hospital where she had emergency surgery to repair an abdominal tear related to her earlier surgery. The claimant notified the employer of her injury and she advised that it was work related. The claimant was released from the hospital on February 27. The employer placed the claimant on leave status pending its worker's compensation carrier's investigation of the injury.

On April 14, claimant's doctor provided medical history information to the employer's insurance provider. The doctor concluded that it was likely the post surgery complication (dehiscence)

occurred as a result of claimant's work activity. The employer stated in this hearing that its provider denied the claim effective April 2, and the employer expected the claimant would report back to work within fifteen days due to a personal leave policy. The claimant advised an employer representative during her doctor's appointment on April 2 that she was not able to return to work due to her injury, and she would further advise her employment status at her next doctor visit on May 5. The claimant was unaware of the worker's compensation claim denial until after her April 2 appointment.

Unbeknownst to the claimant, the employer terminated her employment as a voluntary quit on April 22 for failing to report to work. The claimant learned of her termination at her May 5 doctor appointment when she was informed her medical insurance had been canceled April 30. The claimant has received an unrestricted release to return to work effective May 27, 2010.

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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The administrative law judge concludes the claimant voluntarily left employment due to injury on February 24, 2010, and was off work with notice to the employer she was unable to work. The employer discharged the claimant for no act of misconduct in connection with employment on April 22, 2010.

Whether the claimant was off work due to a job-related or non-job-related injury is not controlling on the employment separation issue. The employer did not terminate claimant's employment for being off work on February 24. The employer terminated the claimant on April 22 based on its worker's compensation denial the claimant had a work-related injury with a self-imposed, non-communicated deadline of her returning to work with 15 days. The claimant provided the

employer with sufficient medical documentation that she could not perform her job until released to return to work. Terminating the claimant's employment on April 22 as a voluntary quit without providing her any notification that she was expected to return by a certain date or that her leave had been canceled is a discharge for no act of misconduct.

Iowa Code section 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".

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.

The administrative law judge further concludes the claimant is able and available for work effective May 27, 2010. The claimant has recovered from her injury, and she has received an unrestricted release to return by her doctor effective May 27.

DECISION:

The department decision dated June 23, 2010, reference 01, is reversed. The claimant voluntarily left employment on February 24, 2010 due to injury, and was discharged by the employer for no act of misconduct on April 22, 2010. The claimant is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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