

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**MICHAEL C PRESSWOOD**  
Claimant

**APPEAL 23A-UI-04334-PT-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**OC: 03/12/23**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated April 12, 2023, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a telephonic hearing was held on May 11, 2023. Claimant participated personally along with his wife, Laura Lillemon. The employer participated through Human Resources Representative Lea Peters. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Whether claimant voluntarily quit employment without good cause attributable to employer.  
Whether claimant's separation was a discharge for disqualifying, job-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for the employer on October 17, 2022. Claimant's employment ended on January 24, 2023, when the employer determined claimant quit his employment by failing to return to work or contact the employer about his absence.

Claimant was employed as a full-time over-the-road truck driver from July 18, 2016, until his employment with Heartland Express Inc. of Iowa ended on January 24, 2023. The employer has a written employee manual that contains an attendance policy. The employer's policy states that employees who are absent for three consecutive days without giving notice to the employer are deemed to have voluntarily quit employment. Claimant was given access to the employer's work rules and policies.

On October 17, 2022, claimant requested time off to relocate from California to Missouri. Claimant anticipated that the move to Missouri would take him a little more than one-month and notified the employer that he intended to return to work on November 25, 2022. The employer approved claimant's leave of absence. On November 18 and 22, claimant's supervisor called claimant seeking an update on claimant's timeframe for returning to work. Claimant did not answer either call, so his supervisor left voicemail messages.

On November 25, 2022, claimant called his supervisor and requested another week off, which the employer granted. Claimant told his supervisor that he would call her on November 29 and update her on his plans. Claimant did not call his supervisor on November 29, but called on December 2 and requested another week off. The employer approved claimant's request.

On December 9, 2022, claimant called his supervisor and reported that he was sick. Claimant did not request a formal leave of absence and claimant's return to work was left open-ended. On December 21 and 22, the employer's safety director called to check on claimant. Claimant did not answer either call, but called back the evening of December 22 and told the safety director that he was still sick. During the call, the safety director agreed to let claimant use two weeks of vacation leave to cover his time off while he was sick. Claimant told the safety director that he would call him on December 27 and update him on his condition. Claimant did not call the employer on December 27, 2022, and the employer received no further communication from the claimant.

On January 3, 2023, claimant's supervisor called claimant and left a voicemail message asking claimant to call her back. Claimant did not return his supervisor's call, so on January 12, 2023, the employer mailed a letter by overnight delivery to claimant's address of record informing claimant that he needed to contact the employer within ten days or the employer would deem his lack of contact a resignation of employment. The claimant did not contact the employer in response to the letter. On January 24, 2023, the employer determined claimant had abandoned his position and separated from employment. The employer had continuing work available to claimant, but claimant has had no further contact with the employer.

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

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit his employment without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.5(1)c provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency,

unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

First it must be determined whether claimant quit or was discharged from employment. A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's testimony concerning claimant's poor communication and complete lack of contact after December 22, 2022, to be more credible than the claimant's testimony.

In this case, the claimant had an intention to quit and carried out that intention by failing to report to work or communicate with the employer in any way after December 22, 2022. Claimant did not request a leave of absence, he failed to return his supervisor's phone call, and he did not respond to the employer's letter notifying him that his lack of communication would be considered a resignation of employment unless he contacted the employer within ten-days. This conduct evidences an intention to terminate the employment relationship. As such, claimant voluntarily quit.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer, or that another exception to the rule exists. Iowa Code § 96.6(2). If the claimant fails to meet their burden, the separation from employment is disqualifying.

Iowa Admin. Code r. 871-24.25(2), (4) and (35) provide:

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:

(2) The claimant moved to a different locality.

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

(b) Obtain certification of release for work from a licensed and practicing physician;

(c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

(d) Fully recover so that the claimant could perform all of the duties of the job.

In this case, while the claimant may have been ill in December 2022 and January 2023, the claimant did not obtain a certification of release from work from a physician, never requested a medical leave of absence from the employer, failed to return to offer his services after he recovered, and did not communicate with the employer in any way after December 22, 2022. Claimant's leaving the employment was not for a good-cause reason attributable to the employer according to Iowa law. As such, benefits must be denied.

**DECISION:**

The decision of the representative dated April 12, 2023, (reference 01) is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



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Patrick B. Thomas  
Administrative Law Judge

May 16, 2023  
Decision Dated and Mailed

pbt/scn

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.