

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
DAVID M KNESS Claimant	APPEAL NO. 17A-UI-12410-S1-T
ADM TRUCKING INC Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 10/29/17 Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

David Kness (claimant) appealed a representative's December 1, 2017, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with ADM Trucking (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 28, 2017. The claimant was represented by Heather Carlson, Attorney at Law, and participated personally. The employer participated by Mike Hammerand, Manager. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 8, 2002, as a full-time truck driver. The claimant became delirious at work on August 3, 2017. He took short-term disability from August 3, 2017, to October 6, 2017. After October 6, 2017, the claimant received no short-term disability payments. His doctor did not issue him a release to return to work without restrictions. He verbally told the claimant he could return to work but he needed to have oxygen with him. The Department of Transportation rules would not allow him to drive with oxygen.

On November 6, 2017, the claimant called the employer and said he was going to retire because he could not come back to work. On November 7, 2017, the manager called the claimant and discussed the claimant's decision. The employer did not have any openings that the claimant was medically able to fill. The claimant said he was going to retire and check into social security disability.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes 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, 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. 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). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to an injury under the advice of his physician. The employer consented to his leaving. The claimant has failed to provide the employer with certification that he has fully recovered. The claimant has failed to meet the requirements of the statute.

DECISION:

The representative's December 1, 2017, 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs