

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEITH R PYLE
Claimant

APPEAL NO. 09A-UI-09836-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC
Employer

OC: 05/17/09
Claimant: Appellant (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Keith Pyle filed an appeal from a representative's decision dated June 29, 2009, reference 01, which denied benefits on a finding that he was on a leave of absence from Barr-Nunn Transportation, Inc. After due notice was issued, a hearing was held by telephone on July 27, 2009. Mr. Pyle participated personally. The employer participated by Wendy Noring, Human Resources Department.

ISSUE:

At issue in this matter is whether Mr. Pyle has satisfied the availability requirements of the law since filing his claim effective May 17, 2009.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Pyle began working for Barr-Nunn Transportation, Inc. on April 26, 2005 as an over-the-road driver. He underwent an annual physical on April 15, 2009, at which time he indicated he had 20-pound lifting restriction. The doctor believed the restriction was due to a hernia that needed to be repaired. On or about May 6, a doctor confirmed that the hernia was not going to be repaired and that it did not impose any restrictions on Mr. Pyle's ability to perform his job.

Because the lifting restriction was not due to the hernia, the employer requested that Mr. Pyle provide documentation that he did not have any back problems that would account for the restriction. On or about May 12, the employer received a doctor's statement indicating that he could not lift more than 20 pounds. His family doctor made plans for him to be seen by a neurosurgeon to determine the extent to which his back restricted his lifting, if at all. On May 20, the employer left a message for Mr. Pyle to call to discuss his condition and employment but he did not return the call.

Mr. Pyle was notified verbally on April 16 and April 29 that his medical leave would expire on June 1, 2009. He was also notified of this fact in a letter date May 14. The employer's last contact with him was May 12. When the employer had not heard further from him as of

June 21, he was presumed to have quit. Although he had an appointment to be seen by a neurosurgeon on June 23, Mr. Pyle did not contact the employer to see if his leave of absence could be extended.

REASONING AND CONCLUSIONS OF LAW:

In order to receive job insurance benefits, an individual must be able to and available for work. Iowa Code section 96.4(3). Mr. Pyle has been off work from since April 15, 2009 because of a lifting restriction. He was given the opportunity to provide medical documentation of his ability to work but was not in contact with the employer after May 12. The employer waited over one month after the last contact before assuming that he quit. The employer even waited beyond the date on which his medical leave expired before processing him as a resignation. Mr. Pyle had ample opportunity to either provide documentation or request additional time in which to do so. Given the amount of time that elapsed without any contact from Mr. Pyle, it was not unreasonable for the employer to assume he was no longer interested in preserving his employment.

Mr. Pyle did not return to work at the expiration of his leave of absence or request an extension of the leave. An individual who is separated from employment under such circumstances is presumed to have quit without good cause attributable to the employer. 871 IAC 24.22(2)j(2). This is not a case in which Mr. Pyle was medically prevented from returning to work at the end of his leave of absence because of physical disability. He simply failed to provide documentation as to whether he did or did not have restrictions that would affect his ability to perform his job. For the reasons cited herein, it is concluded that he is not entitled to job insurance benefits.

DECISION:

The representative's decision dated June 29, 2009, reference 01, is hereby affirmed. Mr. Pyle was separated from Barr-Nunn Transportation, Inc. because he failed to return to work following a leave of absence. Benefits are denied until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css