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

MARK D HAM Claimant **UNITED PARCEL SERVICE** Employer	**APPEAL NO. 22A-UI-16103-JT-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/22/22** **Claimant: Respondent (5)**

Iowa Code Section 96.5(1) – Layoff
Iowa Administrative Code rule 871-24.1(113)(a) & (d) – Layoff & Other Separation

STATEMENT OF THE CASE:

On August 25, 2022, the employer filed a timely appeal from the August 4, 2022, (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on May 22, 2022, with good cause attributable to the employer, due to an injury suffered on the job. After due notice was issued, a hearing was held on September 13, 2022. Mark Ham (claimant) participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Mark Ham (claimant) began employment with United Parcel Service (UPS) in 1988 and last perform work for the employer on October 6, 2021. Mr. Ham worked for UPS as a full-time delivery driver assigned to the Coralville center. The claimant's delivery route served Marengo and the surrounding area. The delivery driver work required extensive walking and heavy lifting. On the morning of October 6, 2021, the claimant suffered injury to his lower back in the course of performing his duties. The claimant immediately reported the injury to the employer. The employer transported the claimant to Mercy Hospital in Iowa City. The claimant's injury gave rise to a worker's compensation claim. The claimant was unable to work and not released by a doctor to return to work through March 21, 2022.

Effective March 21, 2022, the claimant reached maximum medical improvement (MMI) and was released to return to work with permanent medical restrictions that prevented him from performing his delivery driver duties. The claimant did not have the medical restriction document available at the time of the hearing, but attempted to recall the applicable restrictions. The claimant was restricted from shift-long walking and from shift-long standing. The claimant was restricting from lifting greater than 25 to 35 pounds from the floor. The claimant was restricted from lifting greater than 40 to 50 pounds overhead and from pushing or pulling greater than 100 pounds.

Upon being released to return to work with restrictions, the claimant contacted his supervisor. The supervisor told the claimant he would take the necessary steps, pursuant to the employer's ADA accommodations policy and the collective bargaining agreement, to start of ADA accommodation process. The claimant waited for a month without hearing further from the employer. The claimant then contacted the employer's human resources personnel regarding reasonable accommodations pursuant to the ADA and the collective bargaining agreement. The claimant completed necessary paperwork and submitted to an interview. The employer told the claimant there was no work for the claimant at present. The employer then placed the claimant in a six-month holding status, during which time the employer is supposed to be looking for work within the company that reasonably accommodates the claimant's work-related medical restrictions. At no time has the claimant requested a leave of absence. The claimant remains available to return to work that reasonably accommodates his work-related medical restrictions. At no time has the claimant communicated a desire to voluntarily separate from the employer. Rather, the claimant desired to continue in the employment to maximize his company pension. The claimant exhausted temporary worker's compensation total temporary disability (TTD) benefits prior to establishing the unemployment insurance claim that was effective May 22, 2022. The employer has to date not provided the claimant with work that reasonably accommodates his work-related medical restrictions.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
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> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
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> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
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> c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
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> d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 Iowa Administrative Code rule 871-24.25.

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:
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> 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 Administrative Code rule 817-24.26(6)(b) provides as follows:

> Separation because of illness, injury, or pregnancy.
>
> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
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> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work–related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

An employer has an obligation to provide an employee with reasonable accommodations that enable the employee to continue in the employment. See *Sierra v. Employment Appeal Board*, 508 N.W. 2d 719 (Iowa 1993).

The weight of the evidence in the record establishes an involuntary, non-disqualifying separation from the employment. At no time did the claimant indicate an intention to voluntarily leave the employment or to sever the employment relationship. At no time did the claimant take affirmative steps to sever the employment relationship. The claimant's absence from the employment was prompted by a workplace injury and the claimant's recovery form that injury.

At no time did the claimant request a leave of absence. The claimant was eager to return to work with reasonable accommodations once released to do so effective March 21, 2022. The employer/appellant has presented no evidence. The employer presented no evidence establish the claimant's request for accommodations was unreasonable, no evidence to establish the employer was incapable of providing reasonable accommodations, and no evidence to establish providing such reasonable accommodations would impose an undue hardship on the employer. The employer's failure to provide work that reasonably accommodated the claimant's work-related medical restrictions was effectively a layoff, but could also be viewed as an "other separation" based on the claimant's permanent disability that prevented him from meeting the physical standards required for the delivery driver work. Even if the claimant had voluntarily quit the employment, the separation would have been for good cause attributable to the employment, due to the separation being based on a workplace injury and the employer's failure to provide reasonable accommodations after the claimant requested the same. Regardless of how one characterizes the separation, it neither disqualified the claimant for benefits nor relieved the employer of liability for benefits. The weight of the evidence establishes the separation was effective March 21, 2022.

The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The August 4, 2022, (reference 01) is MODIFIED without change to the claimant's eligibility for benefits or the employer's liability for benefits. The claimant involuntarily separated from the employment for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged. The separation was a layoff or "other separation."

James E. Timberland
Administrative Law Judge

October 5, 2022

Decision Dated and Mailed

jt/ac

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: 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.

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

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 adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en https://www.legis.iowa.gov/docs/code/17A.19.pdf.

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.