

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD S WILSON
Claimant

APPEAL NO. 08A-UI-11441-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 10-12-08 R: 12
Claimant: Appellant (1)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 25, 2008, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on December 18, 2008. The claimant did participate. The employer did participate through Dave Dalmasso, Human Resources Representative.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was employed as an over-the-road truck driver, full-time, beginning October 19, 2006, through October 24, 2008, when he voluntarily quit. On October 7, the claimant went to his physician to complete his required DOT physical. The claimant is required to pass a DOT physical in order to maintain his commercial driver's license so he can work as an over-the-road trucker. The claimant's doctor would not pass him, because of sight problems in his left eye. The claimant was referred to an eye doctor, who determined that he had lost sight in his left eye. The claimant notified the employer that he would need time off to complete his physical and to obtain a passing grade on his physical. The claimant was granted 15 days of leave.

After the 15 days expired on October 21, 2008, the claimant reported to the employer that he could not pass the DOT physical, so he would not be able to maintain his CDL and would not be able to return to work. The employer had continuing work available for the claimant if he had been able to return to work. The claimant is unable to work as an over-the-road driver because he cannot pass a DOT physical to maintain his commercial driver's license. A commercial driver's license is an essential element of being an over-the-road driver.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

871 IAC 24.25(35) provides:

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 § 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 § 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:

(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.

The claimant has not been released to return to full work duties as a driver and cannot pass a DOT physical, which is necessary for him to maintain his commercial driver's license. The employer is not obligated to accommodate a non-work related medical condition as is claimant's left eyes blindness. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The November 25, 2008, reference 03, decision is affirmed. The claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw