

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GARY L WALTER**  
Claimant

**APPEAL NO: 11A-UI-01364-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELLIOTT BROS TRUCK LINE INC**  
Employer

**OC: 01/02/11  
Claimant: Respondent (2/R)**

Iowa Code § 96.5(1) – Voluntary Quit

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's January 28, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive benefits. The claimant participated in the hearing. Kathy Barber, the safety manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer as a full-time truck driver in late April 2010. In mid-October 2010 the claimant reported a work-related injury. This injury was covered under workers' compensation.

Initially, the claimant's physician released him to work with a 20-pound weight restriction. The employer accommodated the work restriction by having the claimant work in the shop doing light-duty work. In early December, the claimant was allowed to drive a truck short distances. The claimant did not do overnight driving. On December 23, 2010, the claimant's physician released the claimant to work without any work restrictions.

On December 27, 2010, the claimant saw his physician for other health issues. These health issues were not related to the neck problems he experienced in mid-October. The claimant's physician gave him a note dated December 27, 2010. The statement read that the claimant "is unable to drive truck at this time." The claimant gave the note to his dispatcher the next day.

The claimant talked to Barber on December 29. Barber asked when could he be back to work and commented that the statement was very vague. The claimant agreed the statement was

vague, but said nothing more. The claimant asked if he could file for unemployment insurance benefits. Barber responded that if he did, the employer would protest his claim.

Since the claimant had just been released to work without any restrictions based on his workers' compensation claim, Barber concluded this latest restriction was not work related. After their conversation, the claimant took his personal property out of the truck he had been driving. The claimant has not again contacted the employer.

Barber considered the claimant to have quit when he did not ask for a leave of absence, did not explain why he could not drive a truck as of December 27, removed all his personal property, did not contact the employer any time after December 27 and said he was going to file for unemployment insurance benefits.

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

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The evidence does not establish that the employer discharged the claimant. Instead, the claimant's removal of his personal property, his failure to explain in detail why he could not drive a truck as of December 27 or how long he would be off work, and his failure to keep in contact with the employer about his health condition or even when his doctor would release him to work all demonstrate his intent to quit. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6(2).

Based on the nature of his health issues in late December it is understandable why the claimant did not give Barber the details of his health issues. Even though his physician did not want him to drive at that time, there is no evidence supporting the claimant's assertion his physician told him he had to quit working as a driver. The claimant did not give the employer an opportunity to work with him as they had been doing.

The law states that when a claimant voluntarily quits because continued employment could seriously danger his health, the claimant must present competent evidence that he had to quit for medical reasons and talk to the employer before he quits to see if the employer would make accommodations so he would not have to quit. 871 IAC 24.26(6)b. The claimant did not satisfy these requirements. The claimant established compelling reasons for quitting, but he is not qualified to receive benefits. As of January 2, 2011, the claimant is not qualified to receive benefits.

Since the claimant has received benefits since January 2, 2011, an issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

#### **DECISION:**

The representative's January 28, 2011 determination (reference 01) is reversed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of January 2, 2011.

This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs