

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY L MOHR
Claimant

APPEAL NO: 11A-UI-13115-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADM TRUCKING INC
Employer

**OC: 08/14/11
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 4, 2011 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Michael Hammerand 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 reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in December 1999. He worked full time as a pre-loader. The claimant became ill on February 14, 2011, and requested a leave of absence. The employer learned the claimant's doctor released him to return to work on May 26, but the employer did not have a copy of the release. In late May, the claimant asked for more time off because a family member was going to have surgery. The employer granted the claimant more time off and expected the claimant to return to work by mid or late-June. The employer told the claimant he had to have a return to work drug test and a fitness to work physical exam before he could return to work.

The claimant took the drug test in June and it was negative. The employer tried unsuccessfully to contact the claimant in late June and July about getting the fitness to return physician completed. When it was more than 30 days from the date the claimant took the drug test, the employer's rules required the claimant to take another drug test. After the employer was again able to contact the claimant, he asked the claimant to take another drug test and to go to the local clinic to get his return to work fitness test completed. Also, the employer asked the claimant to give the employer a copy of his doctor's statement releasing him to work because the employer had not yet received a copy of the release.

The employer received information the claimant had taken a second drug test and it was also negative. The claimant still needed to provide his doctor's release and complete the return to work fitness test. When the employer had not received the additional information by August 23, the employer mailed the claimant a letter stating he had to provide this information to the employer by August 31. The employer also informed the claimant that if he did not provide this information by August 31, the employer would end his employment.

The employer did not have the requested documentation by August 31. The employer received the claimant's release to return to work statement from his doctor shortly after September 1. The claimant did not go to the local clinic to have the return to work fitness done. On September 1, the employer sent the claimant a letter informing him he no longer worked for the employer because of his excessive absenteeism.

The claimant had established a claim for benefits during the week of August 14, 2011.

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 establishes the claimant voluntarily quit his employment when he failed to return to work by early July 2011. 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).

The evidence shows the claimant was released by his physician to return to work on May 26, 2011. The employer then granted the claimant an additional two to three weeks so he would be able to help a family member during a scheduled surgery. The claimant started the procedure to return to work by taking a drug test. Even though the employer told the claimant he needed to provide the employer with a copy of this doctor's May 26, 2011 release and that he had get a return to work fitness physical, the claimant did not follow these instructions.

The employer gave the claimant a second chance to return to work in August. Again, the claimant took a drug test because the first one had been completed more than 30 days earlier. Again, the claimant did not provide the employer with a copy of his doctor's release or go to the local clinic to have a return to work fitness test completed. The employer gave the claimant a final opportunity to provide the requested information on August 23 and gave the claimant until August 31 to provide the requested information. Again, the claimant did not provide this information by August 31.

The claimant's assertion he was waiting for the employer to make him an appointment to get the return to work physical completed is not persuasive. The claimant lived and worked in the same community. The claimant could have easily made arrangements to have the return to work fitness physical completed, but did not. The claimant's failure to take the necessary steps to return to work by providing the requested documentation and information by August 31 indicates he had no intention of returning to work and quit. The claimant quit for reasons that do not qualify him to receive benefits. As of August 28, 2011, the claimant is not qualified to receive benefits.

DECISION:

The representative's October 4, 2011 determination (reference 02) is affirmed. 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. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css