

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FORREST L OLCOTT
Claimant

APPEAL NO. 14A-UI-11175-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST MOTOR EXPRESS INC
Employer

OC: 08/10/14
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a representative's decision dated September 4, 2014, reference 02, that concluded the claimant had voluntarily quit work on August 8, 2014 under disqualifying conditions. After due notice, a telephone hearing was held on November 17, 2014. Claimant participated. The employer participated by Mr. Chad Liveringhouse, Terminal Manager. Department Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the claimant filed a timely appeal and whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: A notice of agency decision determination was mailed to the claimant's last-known address of record on September 4, 2014. The notice of decision contained a warning that any appeal must be postmarked, faxed or returned by the due date of September 14, 2014. On September 12, 2014, the claimant faxed an appeal to Fax no. 515-242-5144, the fax number for the Appeals Section of Iowa Workforce Development. The fax transmission receipt received by the claimant shows a successful fax and suggests that the claimant's appeal was received by the agency on September 12, 2014. After later being informed that the agency had no record of his appeal, Mr. Olcott re-submitted his appeal on October 28, 2014.

Mr. Olcott was employed by Midwest Motor Express, Inc. from November 22, 2000 until August 5, 2014 when his employment came to an end because Mr. Olcott was unable to pass his DOT physical and therefore could not maintain his commercial driver's license required to perform his duties as a tractor/trailer driver for the company. The claimant had explored other employment opportunities at Midwest Motor Express, Inc. but a transfer to a dock worker position was not available to him. Prior to separating from his employment, Mr. Olcott and the terminal manager explored the alternatives available. The employer concluded that Mr. Olcott

could not continue to perform his job as a driver for the company because he was no longer medically qualified to drive. Mr. Olcott did not wish to leave his employment with the company but was also aware that he was required to maintain his commercial driver's license in order to perform his job and no other work was available to him. The employer could not keep the claimant as a driver, and no other positions were available, however, Mr. Liveringhouse. denies discharging Mr. Olcott and Mr. Olcott denies quitting his job.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the claimant's appeal should be considered timely. The greater weight of evidence in the record indicates that the claimant's appeal was received by the Appeals Section on September 12, 2014 and the claimant was reasonable in concluding that the appeal was received based upon the positive facsimile confirmation he received. The administrative law judge concludes that the claimant's appeal was timely.

The next question before the administrative law judge is whether the claimant's separation from employment took place under disqualifying conditions. It did not. Health-related separations often present difficult analytical issues. The issue in this case is the nature of the claimant's separation. Claimants who meet the eligibility requirements of Iowa Code section 96.4 can receive benefits unless they are disqualified by Iowa Code section 96.5. If an eligible claimant is separated from employment in a way that cannot be characterized either as a termination or a voluntary quit then, absent some special provision, the claimant will not be disqualified from benefits. In other words, if the claimant does not quit, he cannot be disqualified because of a voluntary quit and if the claimant is not terminated, he cannot be disqualified because of a termination for misconduct.

The claimant had a medical restriction but presents himself to the employer as willing to work but was told there was no work because of the medical issue. The claimant continued to be willing to work and the employer continued to be willing to employ the claimant except for the medical condition which is beyond the claimant's control. The result was the employer removed the claimant from its employ because the company could no longer keep a job position for the claimant. That situation involved neither a quit nor a discharge.

Iowa Administrative Code 871-24.25(96) 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 section 96.5.

Quitting requires an intention to terminate employment accompanied by an overt act carried out the intent. Peck v. Employment Appeal Board, 492 N.W. 2d 438 (Iowa Ct. App. 1992). Since the employer has the burden of proving disqualification, the employer has the burden of proving that a quit rather than a discharge has taken place. Iowa Code section 96.6(2); 871-IAC 24.25. On the issue of whether a quit is for good cause attributable to the employer the claimant has the burden of proof by a statute. Iowa Code section 96.6(2).

Iowa Workforce Development has defined the various types of separation from employment in 871-IAC 24.1. All termination of employment under that provision, are generally classified as layoffs, quits, discharges, or other separations. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as lack of orders, or termination of seasonal or temporary employment. 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. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism or insubordination. Other separations are termination of employment for military duty lasting or expected to last more than 30 calendar days, permanent disability, and failure to meet the physical standards required.

In the case at hand, the record does not establish that the claimant quit and the record does not establish that the claimant was discharged for any unsatisfactory performance or failure to follow company rules. The separation occurred when the employer could not maintain the claimant's job position because the claimant failed to meet the physical standards required. This is not a disqualifying quit or disqualifying termination. However, in order to receive unemployment insurance benefits an individual must be physically and mentally able to work at some gainful employment, not necessarily in the individual's customary occupation, but one which is engaged in by others as a means of livelihood.

The administrative law judge concludes based upon the evidence in the record that the claimant was not separated from employment in a manner that would disqualify the claimant from benefits. The claimant was separated from employment because he was physically unable to perform the duties required by his job and the separation from employment took place under non disqualifying conditions.

Iowa Code section 96.7-2-a(2) provides that the amount of benefits paid to an eligible individual shall be charged against the account of employers in the base period in the inverse chronologic order in which the employment of the individual occurred unless ... the individual has been discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer or refused suitable work without good cause.

In this case the employer's account is subject to charge because the claimant was not discharged for work-connected misconduct, and did not voluntarily quit employment. The claimant also did not refuse suitable work. (At this time the statute does not provide an exemption from charging for benefits paid in a situation such as the case at hand, however only the legislature can make such an exemption.)

The unemployment insurance rule provides that a person must be physically able to work not necessarily in the individual's customary occupation, but in some reasonably suitable comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes the claimant is able to perform gainful work not just work that requires commercial driving. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform and the claimant has been actively looking for such work in compliance with the requirements of the law.

DECISION:

The representative's decision dated September 4, 2014, reference 02, is reversed. The claimant was not separated from employment in a manner that would disqualify the claimant from benefits. Claimant is able and available for work. Accordingly, the claimant is allowed benefits, provided that he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs