

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**GILBERT HRIBAL II
664 SNYDER RD
ROCHESTER MILLS, PA 15771**

**HEARTLAND EXPRESS INC OF IOWA
ACCOUNTING
901 N. KANSAS AVE
NORTH LIBERTY, IA 52317**

**DIA CASE NO. 20IWDUI0026
IWD APPEAL NO. 20A-UI-01968**

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515) 281-7191***

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:

The name, address and social security number of the claimant.
A reference to the decision from which the appeal is taken.
That an appeal from such decision is being made and such appeal is signed.
The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your 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.

ONLINE RESOURCES:

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GILBERT HRIBAL II
Claimant

HEARTLAND EXPRESS INC OF IOWA
Employer

**DIA CASE NO. 20IWDUI0026
IWD APPEAL NO. 20A-UI-01968**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/19/20
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.25 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Gilbert Hribal II, filed an appeal from the February 26, 2020, (reference 02) unemployment insurance decision that concluded he was not eligible for unemployment insurance benefits. A telephone hearing was scheduled for April 15, 2020. The claimant did not call in and he was considered in default. He requested that the hearing be reopened and his request was granted. The notice of hearing instructed the claimant to call a toll-free conference number on May 11, 2020. The claimant, Gilbert Hribal, participated and presented testimony. Leah Peters represented the employer, Heartland Express. The administrative file was made a part of the record.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

The claimant began working for the employer, Heartland Express, on January 20, 2017. The employer determined that the claimant voluntarily quit his job on December 13, 2019. According to the employer, it received the Appellant's request under the Family Medical Leave Act (FMLA) on July 19, 2019. FMLA allowed for 12 weeks of leave. On October 17, 2019, a human resources representative called the claimant to ask about his return to work, and the claimant stated that he was waiting for information from his doctor. Because the claimant's FMLA had expired, the employer sent another letter to the claimant inquiring whether he could return to work or needed to request an accommodation. The information was due November 11. The employer received timely information from the claimant's doctor stating that the claimant could not return to work due to a lifting restriction. Therefore, the employer extended his leave through November 26, 2019. On November 27, 2019, the employer continued the interactive process and contacted the claimant about his return to work, with another request for information due December 12, 2019. The request warned that if the employer received no response by the deadline, the claimant would be considered a resignation. On December 9, the employer left a message for the claimant, reminding him that the paperwork was soon due. The employer did not receive paperwork from the claimant or his doctor by December 13. Because

the employer received no response by the deadline, it found the claimant voluntarily quit. (Peters testimony)

The claimant appealed. He was infuriated when he received the letter from the employer finding that he quit his job. He intended to come back to work and told this to the employer's representative, Rebeckah Ackerman, "over and over and over." After the employer sent him the request for information in November, he drove 75 miles to give that form to his doctor, which the doctor completed and sent back. When the claimant received the next request in December, he again drove to his doctor and gave him the request to complete. He questioned why he would go to that trouble in November, but fail to do the same in December, as the employer claimed. (Hribal testimony)

On December 9, 2019, after he got the call from the employer, the claimant called his doctor's office to check on the paperwork. The doctor told him that they were waiting on information from the physical therapist. The doctor then confirmed that they received the information and told the claimant that they mailed the forms. The claimant called Rebeckah on December 9, 2019 and told her that the doctor's office was sending the forms. The next thing the claimant received was a letter on December 24, 2019 saying that he was terminated because he had quit. (Hribal testimony)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code §96.5(1) 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.

Iowa Admin. Code r. 871-24.25 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. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10.

Iowa Admin. Code r. 871-24.26 provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer: (6) 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. 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

In this case, the undersigned finds the claimant did not voluntarily quit his employment. There is no dispute the claimant left work because of a medical reason and was approved for FMLA. Per a doctor's note, the claimant was not able to return to work in November. The question is December. The employer requested the claimant provide information regarding whether he could return to work or needed to request an accommodation. The employer did not receive information from the claimant or physician by the December 13, 2019 due date, so considered that the claimant voluntarily quit.

The claimant vehemently disputed this information. According to his testimony, after receiving the request for information in December, he drove 75 miles to his doctor to provide him the paperwork to complete and send to the employer. He followed up with his doctor on December 9, 2019, and then called his employer to confirm that his doctor was sending the paperwork. Ms. Ackerman did not testify to confirm whether she spoke to the claimant.

The undersigned finds the claimant's testimony to be credible. There is no dispute the employer did not receive the December paperwork. However, the claimant demonstrated that he made a significant effort to provide the paperwork and did not show an intent to quit his job. The employer did not show that the claimant no longer desired to remain in the relationship of an employee with the employer. The claimant did not voluntarily quit his job, and the decision is reversed.

DECISION:

The February 26, 2020, (reference 02) unemployment insurance decision is reversed. Claimant did not voluntarily quit his employment. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Kathleen M. O'Neill

Kathleen M. O'Neill
Administrative Law Judge

May 15, 2020
Decision Dated and Mailed

CC: Gilbert Hribal II (by first class mail)
Heartland Express Inc. of Iowa (by first class mail)
Nicole Merrill, IWD (email)
Joni Benson, IWD (email)