

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS PEED

Claimant

APPEAL NO. 10A-UI-02387-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEYL TRUCK LINES INC

Employer

OC: 12/27/09

Claimant: Appellant (2)

Section 96.5(1) – Quit
Section 96.5(2)a – Discharge
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Douglas Peed, filed an appeal from a decision dated February 3, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 31, 2010. The claimant participated on his own behalf. The employer, Heyl Truck Lines, participated by Safety Director Keith Pease. Exhibit A was admitted into the record.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer and whether he is able and available for work.

FINDINGS OF FACT:

Douglas Peed was employed by Heyl Truck Lines from October 6, 2003 until February 25, 2010 as a full-time over the road truck driver. He failed the required DOT physical in November 2009 due to high blood pressure and high blood sugar. The employer allowed him 12 weeks, even though he had declined to fill out the FMLA papers, to work with his doctor to get the medical problems under control.

During the leave of absence Mr. Peed kept in touch with Safety Director Keith Pease. Although his blood pressure and blood sugar levels did go down a little, he was still not able to meet the DOT requirements. At the end of the 12 weeks the employer informed the claimant his employment was at an end because he was not qualified to drive a truck under the DOT requirements.

Mr. Peed has a high school equivalent degree, training and experience in heating and air conditioning, and machine maintenance. Other than not being able to drive a commercial vehicle he has no restrictions on his physical activities.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

The claimant did not quit his employment voluntarily. He was not able to meet the DOT requirements to maintain his qualification to drive a truck and Heyl Truck Lines could not continue to allow him to do so. This is not a voluntary separation.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The claimant was discharged by the employer because he was no longer able to perform the essential functions of his job. There was no misconduct but the employer had no choice but to release him as he was not able to drive truck as he was hired to do.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant is able and available for work in the labor market generally. He has no physical restrictions other than not being able to drive a commercial vehicle, and has sufficient training and work experience in other areas to be available to other employers.

DECISION:

The representative's decision of February 3, 2010, reference 01, is reversed. Douglas Peed is qualified for benefits and is able and available for work. Benefits are allowed, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs