

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIMOTHY C ROOKER**  
Claimant

**APPEAL NO. 10A-UI-03374-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KENNETH CHAPMAN**  
Employer

**OC: 01/31/10  
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated February 22, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 16, 2010. Claimant participated. Employer participated by Terry Chapman, Service Manager. Jim Book was a witness for the employer. The record consists of the testimony of Timothy Rooker; the testimony of Terry Chapman; and the testimony of Jim Book.

**ISSUE:**

Whether the claimant voluntarily left for good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired as an HVAC service technician on September 22, 2008. In order to permit the claimant to make service and installation calls, the claimant was assigned a company vehicle. The vehicle that he was assigned was a 2005 Ford Econoline van.

The claimant resigned his position on December 28, 2009. The reason that he resigned was that he did not feel that his vehicle was safe to drive. The claimant believed that the tires were "bald". He had gotten pulled out of a ditch and several driveways after being stuck in the snow. The claimant had asked that the tires be checked and nothing was done. He was also concerned about the brakes. He told his employer that the job was not for him. Work was available for the claimant at the time of his resignation.

The tires in question had slightly less than 50 percent of their tread left. The tires had five to six thirty-seconds of tread. Tires are not replaced until there is two thirty seconds of tread left. The brakes on the vehicle showed 50% of wear. The vehicle was not unsafe to drive. Several vehicles owned by the employer had gotten stuck during the month of December due to heavy snow and unplowed roads and driveways.

**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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in this case established that it was the claimant who initiated the separation of employment. He quit because he believed that his vehicle was unsafe to drive. The claimant based this belief on the fact that he had gotten stuck several times while doing service calls. In his opinion this would not have happened if he had better tires. He told his employer when he quit that he “just couldn’t take it anymore.”

The administrative law judge concludes that the claimant’s belief that he was driving an unsafe vehicle and therefore had to quit is not supported by the greater weight of the evidence in this case. The tires on his vehicle were not “bald” as the claimant alleged. The tires had slightly less than 50 percent of the tread left and were still safe for use on his vehicle. The brake pads also had only 50 percent wear and did not need to be replaced. The claimant based his opinion on the fact that he had been stuck in a ditch and several driveways. Mr. Chapman credibly explained that given the snow and difficult road conditions, both in rural areas and in town, getting stuck in the snow would happen. He himself had gotten stuck and had to be pulled out. None of the vehicles had four-wheel drive and so even if the claimant had had brand new tires, he would still likely have gotten stuck in the snow. The claimant’s subjective belief, however sincere, is simply not supported by the credible evidence in this case. The claimant did not leave for good cause attributable to the employer. Benefits are denied.

**DECISION:**

The decision of the representative dated February 22, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant’s weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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