IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ROBERT W YELM Claimant **WENGER TRUCK LINES INC** Employer	**APPEAL 17A-UI-03237-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/19/17** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 13, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 17, 2017. Claimant participated. Employer participated through safety director Jamie Quade. Claimant exhibit A was admitted into evidence with no objection.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an over-the-road truck driver from July 5, 2016, and was separated from employment on February 27, 2017, when he quit.

Claimant is diabetic and was having issues with his blood sugars, which affected his medical card. Claimant decided to go to Mexico to have surgery to help his blood sugar issue. The employer was informed that claimant was going to have surgery, but was not aware until February 16, 2017 of the exact date of his surgery.

Claimant's last day of work was February 14, 2017. Claimant was scheduled to work on February 15, 16, and 17, 2017, but he did not work. Claimant did not contact dispatcher Kevin to inform him that he was not going to work those days; from February 10, 2017 through February 14, 2017, claimant changed dispatchers from Paul to Kevin. On February 15, 2017, claimant told the vice-president for the employer that he too much to do to prepare for the surgery that he would not be in on February 15 through February 27, 2017. On February 16, 2017, claimant sent a text message to his old dispatcher Paul stating he was going to be off work the following week due to his surgery and he was having surgery on February 20, 2017.

On Friday, February 17, 2017, claimant did not receive his direct deposit from TLC. Claimant Exhibit A. The employer paid claimant every Friday for the previous week's work. Claimant was paid via direct deposit and the deposits were made through TLC Companies, Payroll (hereinafter "TLC"). Claimant Exhibit A. On February 17, 2017, the employer sent TLC

authorization to deposit $1083.08 (net) in claimant's Community State Bank account. After the employer sends an authorization to TLC, TLC makes the deposit and then sends a confirmation of the deposit to the employer. Ms. Quade testified the employer did not have a confirmation from TLC for any February 17, 2017 deposit in claimant's account.

On February 23, 2017, claimant contacted Paul about not getting paid. Paul told claimant that he would check into it but advised claimant to call the vice-president of the employer. Claimant then contacted the vice-president of the employer and was told that his paychecks were on hold. Claimant did not get paid on Friday, February 24, 2017. On Friday, February 24, 2017, claimant should have received a deposit for his work on February 13 and 14, 2017. Ms. Quade testified that claimant was not paid on February 24, 2017 because claimant was having surgery and had not been having correspondence with the employer, so the employer put his final paycheck on hold. Claimant's had two medical deductions that were taken out. On February 27, 2017, claimant told Paul that he did not get his paycheck and that he was quitting. On March 10, 2017, claimant eventually received his February 24, 2017 deposit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment with good cause attributable to the employer.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit submitted. This administrative law judge finds claimant's version of events to be more credible than the employer's recollection of those events.

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. 871-24.26(1) 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:
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the

> worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

Although claimant was not required by law to give the employer notice of his intent to quit, the change to the terms of hire must be substantial in order to allow benefits. The employer has a duty to ensure employees are paid when they are supposed to be paid. In this case, the employer failed to pay claimant on two consecutive Fridays. Although Ms. Quade credibly testified that the employer authorized TLC to pay claimant on February 17, 2017, it is clear from claimant's bank records and TLC's failure to send the employer a confirmation that claimant was not paid on February 17, 2017. Furthermore, on February 23, 2017, when claimant contacted the vice-president for the employer, he was told his paychecks were on hold, but the employer did not give him a reason why they were on hold. The employer did not pay claimant on Friday, February 24, 2017.

In the absence of an agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving employment. *Deshler Broom Factory v. Kinney*, 140 Nebraska 889, 2 N.W.2d 332 (1942). The employer's failure to pay claimant on two consecutive Fridays without providing him a reason created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The March 13, 2017, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

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