

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERNIE M ABELL
Claimant

APPEAL NO. 12A-UI-00221-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

RK FUELS INC
Employer

OC: 12/04/11
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated January 5, 2012, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 2, 2012. The claimant participated. The employer participated by Randy Kohlscheen, owner. The record consists of the testimony of Ernie Abell and the testimony of Randy Kohlscheen.

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 employer sells and distributes wholesale and retail diesel and gasoline fuel. The claimant was hired on May 2, 2011, as a full-time driver. His last day of work was December 7, 2011. He voluntarily quit his job on December 7, 2011.

The claimant and the employer had been having some disagreements. The claimant thought he was supposed to get a company cell phone. The truck he was driving needed repairs. On December 5, 2011, the claimant told Mr. Kohlscheen that he was going to look for another job. On December 6, 2011, the claimant refused to haul a load that was overweight. He had the right to refuse to drive a load that was overweight. Mr. Kohlscheen told the claimant to do what needed to be done to make the load legal and the claimant still refused to drive.

On December 7, 2011, there were no loads for any of the drivers. The claimant called Mr. Kohlscheen to confirm this and they began discussing the other issues. The claimant told Mr. Kohlscheen that he was going to get his old job back at Western Coop on Friday, December 9, 2011. The employer's payroll ended on December 8, 2011. Mr. Kohlscheen told the claimant he would pay him for December 7, 2011, and December 8, 2011. He then offered to get the claimant's personal items out of the truck. The claimant told Mr. Kohlscheen that if that was done, he would call the sheriff. Mr. Kohlscheen did not terminate the claimant and had no plans to terminate the claimant.

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 issue in this case is whether the claimant voluntarily quit his job or whether he was terminated by the employer. The greater weight of the credible evidence is that the claimant was dissatisfied with the working environment and that he elected to quit his position. The claimant told the employer on December 5, 2011, that he was going to look for another job. On December 7, 2011, he told the employer he had his old job back with Western Coop on Friday. The employer took the claimant at his word and offered to pay him for December 6, 2011, and December 7, 2011. When the employer offered to clean out the truck for the claimant, the claimant became angry and threatened to call the sheriff. This threat shows that the claimant was clearly hostile and upset with the employer and substantiates the conclusion that it was the claimant who initiated the separation of employment.

The administrative law judge finds that Mr. Kohlscheen's testimony that he did not terminate the claimant and had no intention of terminating the claimant to be credible. The claimant elected to quit his job and was not terminated. There is insufficient evidence that the claimant quit for good cause attributable to the employer. The claimant was not forced to haul a load that was overweight but, rather, was instructed to make the load legal. There may have been a delay in getting the claimant's truck fixed, but that is insufficient reason for quitting, particularly since the matter was taken care of by the employer.

Since the claimant voluntarily quit without good cause attributable to the employer, benefits are denied.

DECISION:

The representative's decision dated January 5, 2012, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw