

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOUGLAS J FUQUA**  
Claimant

**APPEAL NO. 11A-UI-08076-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DON HUMMER TRUCKING CORP**  
Employer

**OC: 05/08/11  
Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Douglas Fuqua filed a timely appeal from the June 10, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 15, 2011. Mr. Fuqua participated. Dena Boelter, Director of Human Resources, represented the employer.

**ISSUE:**

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer operates a trucking firm with 160 drivers. Douglas Fuqua started working for Don Hummer Trucking Corporation in 2008 as a full-time over-the-road truck driver and last performed work for the employer on May 2, 2011. Mr. Fuqua's immediate supervisor was Lynette Merta, Driver Manager. Up until May 2, 2011, the employer had allowed Mr. Fuqua to drive his assigned semi home. This would generally involve driving without a load to and/or from home to some loading or delivery point. The employer is located in Oxford, Iowa. At the start of the employment, Mr. Fuqua lived in Monroe, Iowa. Monroe is south of Newton and about 10 miles south of Interstate 80. Mr. Fuqua later moved to Runnells, Iowa, close to the Des Moines metropolitan area and still no more than 10 miles south of I-80. Mr. Fuqua lived in Runnells for two or three months before he moved to his current home in Oto, Iowa in November 2010. Oto is near Sioux City and just over 20 miles from Interstate-29 in Northwest Iowa. Prior to moving to Oto, Mr. Fuqua had discussed his plans to move there with the employer and received the okay to do so. Mr. Fuqua was still relatively close to an Interstate and close to some of the employer's customers.

On May 2, 2011, Mr. Fuqua was getting ready to have some time off so that he could take his girlfriend to a stress test. Mr. Fuqua's girlfriend had been experiencing heart and lung problems. Mr. Fuqua was supposed to report back for work on May 3. As Mr. Fuqua was preparing for his time off, the operations manager notified Mr. Fuqua that he was no longer allowed to drive his truck home. The employer was concerned about the fuel expense

associated with Mr. Fuqua driving to and from home without a load of freight. Mr. Fuqua did not control where he loaded or delivered. Rather than assign Mr. Fuqua loads to be picked or delivered closer to his home, the employer had been assigning loads in such places as Waterloo, more than half way across the state. Based on the operations manager's decision, Mr. Fuqua rented a car to get him from the employer's headquarters in Oxford to his home in Oto. Before Mr. Fuqua left Oxford, he asked the operations manager whether the employer could have someone pick him up at home and bring him back to Oxford. The operations manager told Mr. Fuqua it would be his responsibility to find a way back to Homestead. Mr. Fuqua asked the operations manager whether he needed to clean out his truck. The operations manager said, "Yes, definitely, the truck has to run." The operations manager did not discharge Mr. Fuqua from the employment with that statement.

Mr. Fuqua did not arrange a way to get back to Homestead on May 3. Mr. Fuqua shared a car with his girlfriend. Mr. Fuqua did not want to deprive his girlfriend of the car by taking it to Homestead and leaving it there while he was driving his work truck. Mr. Fuqua was not open to the idea of having his girlfriend drive him to Oxford in light of the fact that he had not previously been required to provide his own transportation from home to work.

On May 5, Dena Boelter, Director of Human Resources, attempted unsuccessfully to contact Mr. Fuqua by telephone.

On Friday, May 6, Mr. Fuqua telephoned Ms. Boelter. Mr. Fuqua told Ms. Boelter that his girlfriend was hospitalized and that he would call with an update on Monday, May 9. During the same call, Mr. Fuqua asked whether it might be acceptable to the employer to have him park his truck in Avoca, Iowa from that point forward. Ms. Boelter checked on that arrangement while she was still on the phone with Mr. Fuqua and came back with an answer that that was acceptable to the employer. Avoca is right off of I-80, south of Denison. It is also 81 miles from Oto.

During the period of May 6-10, Mr. Fuqua had telephone conversations with Chris Hummer, Vice President. Mr. Hummer was not willing to allow the previous arrangement of having Mr. Fuqua driving empty for great distances, but wanted to reach some mutually acceptable agreement. Mr. Hummer assured Mr. Fuqua that he was working on the matter.

Mr. Fuqua has not returned to work. The employer considers him to be an employee and considers him to be on a leave of absence. The employer sent Mr. Fuqua Family and Medical Leave application materials, but Mr. Fuqua did nothing with them because his girlfriend had recovered and he did not need them. Mr. Fuqua has never requested a leave, but the employer considers him to be on one.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Workforce Development rule 871 IAC 24.1(113) provides as follows:

24.1(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

It has now been 11 weeks since Mr. Fuqua has performed work for the employer. The weight of the evidence establishes a separation from the employment has occurred. The separation was initiated by the employer's decision to substantially change the established conditions of the employment by no longer allowing Mr. Fuqua to drive the truck to and from him home. Mr. Fuqua has by his actions refused to acquiesce in the changed conditions of the employment and has elected to remain separated from the employment instead. The evidence indicates that the employer still has work for Mr. Fuqua, but only if he acquiesces in the changed conditions of the employment.

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 weight of the evidence in the record establishes a voluntary separation based on changes in the conditions of the employment.

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.

871 IAC 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.

“Change in the contract of hire” means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer’s motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

By allowing Mr. Fuqua to continue taking the truck home to Oto from November 2010 until May 2, 2011 that became part of the established conditions of the employment. To suddenly change that arrangement did indeed create a substantial change in the conditions of the employment. Mr. Fuqua suddenly had to come up with another means of getting back and forth to the employer’s headquarters in Homestead. Even the discussion about leave the truck in Avoca leaves a substantial change in the conditions of the employment, given that it require Mr. Fuqua to come up with a vehicle to drive an hour and a half each way. While the employer’s concern about the fuel expense is understandable, the law indicates that administrative law judge must consider only the impact on the worker.

Mr. Fuqua voluntarily quit the employment for good cause attributable to the employer, based on a substantial change in the conditions of the employment. Accordingly, Mr. Fuqua is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits paid to Mr. Fuqua.

**DECISION:**

The Agency representative’s June 10, 2011, reference 01, decision is reversed. The claimant voluntarily quit the employment effective May 3, 2011 for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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