

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JAMES ROBINSON
3841 WILKES AVE
APT 6
DAVENPORT IA 52806**

**COUNTY WASTE SYSTEM
PO BOX 5410
ROCK ISLAND IL 61204-5410**

**Appeal Number: 05A-UI-11029-RT
OC: 10-02-05 R: 04
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, James Robinson, filed a timely appeal from an unemployment insurance decision dated October 21, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on November 10, 2005, with the claimant participating. Brian Laing, Operations Manager, and Michael Sedam, General Manager, participated in the hearing for the employer, County Waste System. Art Carter was available to testify for the employer but not called because his testimony would have been repetitive and unnecessary. The administrative law judge takes official notice of Iowa Workforce Development Department of unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full time front load garbage truck driver from mid-June of 2005 until he voluntarily quit on August 9, 2005. The claimant worked on August 9, 2005 and then failed to show up for work thereafter. The claimant did intend to quit. The claimant quit because of problems with his truck. On at least five or six occasions the claimant's truck, number 160, broke down and could not be operated at all. Among other things, the claimant's truck had an oil leak, an air leak from the air brake, and a loose steering column. On some occasions, and in particular on August 9, 2005, the claimant's truck would only operate at about 15 miles per hour in the city and 30 miles per hour on the interstate. The truck was alright in the morning but after the claimant operated it for a brief period of time it would not operate over those speeds. The claimant had expressed concerns to the employer's witness, Brian Laing, Operations Manager, about the condition of his truck. The employer's practice was to have the drivers fill out a written report about the truck's problems and a copy would be sent to the mechanic who would fix it. The claimant did so on numerous occasions. On one occasion when the claimant expressed concerns to Mr. Laing he indicated to Mr. Laing that he would have to quit if his concerns were not addressed. The claimant's truck was never adequately repaired and the claimant quit. There was a back up truck available part of the time and but would be occasions when the claimant would simply have to wait until his truck was fixed in order to run his route. The claimant's truck was down approximately 6.99 hours in the two months that the claimant worked for the employer.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was not.

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(2), (3), (4) 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:

(2) The claimant left due to unsafe working conditions.

(3) The claimant left due to unlawful working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

The parties agree, and the administrative law judge concludes, that the claimant voluntarily quit on August 9, 2005. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the

claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. Although it is a close question, the administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant testified that he left his employment because of continuing truck problems.

The claimant operated a front load garbage truck and was assigned one truck, truck number 160. At least five or six times the claimant's truck was broken down to the extent that it could not be operated. The employer's witness, Brian Laing, Operations Manager, even conceded to those breakdowns. Among the problems the claimant's truck suffered were an oil leak, an air leak from the air brake, and a loose steering column. Mr. Laing admitted to the oil leak and the air leak. On some occasions when the claimant was given a back up truck it was no better. The employer's witness, Michael Sedam, General Manager, testified that during the claimant's two months of employment his truck was inoperable 6.99 hours. The administrative law judge concludes that the number of complete breakdowns and the time the truck was out of service coupled with the specific problems outlined by the claimant do indicate significant problems with the truck.

The claimant testified that on some occasions and especially on August 9, 2005, the truck would only go 15 miles per hour in the city and 30 miles per hour on the interstate. The truck was operating satisfactorily in the morning but as the claimant operated it the claimant found that he was unable to reach speeds any higher. Even Mr. Laing conceded that the claimant's truck had a speed problem but he thought that the maximum speed was 45 miles per hour. The administrative law judge does not believe that even 45 miles per hour is sufficient maximum speed for a garbage truck especially in view of traffic problems and other concerns. The administrative law judge notes that the claimant was employed by the employer after leaving a prior employer because of the quality of his truck. The administrative law judge also bears in mind that truck drivers notoriously complain about their trucks. However, in this particular case, the administrative law judge is constrained to conclude that the claimant's truck did suffer significant problems and made the claimant's working conditions intolerable, detrimental and unsafe and perhaps even unlawful. A loose steering column and air leaks from the air brake are significant safety concerns.

The next issue is whether the claimant adequately informed the employer of his concerns. The claimant testified that he informed Mr. Laing orally about his truck and also submitted write-ups as he was required to do at the end of the workday. The claimant testified that he prepared those write-ups every day. Mr. Laing conceded that the claimant did complain to him orally about trucks as well as prepare the write-ups. The claimant testified that at least on one occasion he informed Mr. Laing that he would have to quit if his concerns about the truck were not addressed. Mr. Laing did not recall this statement, but the administrative law judge concludes on the record here that the claimant did make such a statement. The employer's other witness, Michael Sedam, General Manager, testified that the claimant did not express any concerns to him or indicate or announce an intention to quit prior to his quit but Mr. Sedam conceded that the claimant would be more likely to express those concerns to Mr. Laing.

In summary, although it is a close question, the administrative law judge concludes that the claimant left his employment voluntarily with good cause attributable to the employer and, as a consequence, he is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided he is otherwise eligible.

DECISION:

The representative's decision of October 21, 2005, reference 01, is reversed. The claimant, James Robinson, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he left his employment voluntarily with good cause attributable to the employer.

kkf/kjw