

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**STEVEN L REINEKE**  
Claimant

**APPEAL NO. 19A-UI-02062-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L COUNTRY TRUCKING INC**  
Employer

**OC: 12/02/18**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Steven Reineke filed a timely appeal from the March 1, 2019, reference 02, decision that held he was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Reineke voluntarily quit on December 13, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on March 25, 2019. Mr. Reineke participated. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibits A and B were received into evidence. The administrative law judge took official notice of the administrative law judge decision in Appeal Number 19A-UI-00077-NM-T and of the deputy's notes from the February 27, 2019 fact-finding interview that preceded the March 1, 2019, reference 02, decision.

**ISSUES:**

Whether Mr. Reineke voluntarily quit without good cause attributable to the employer.

Whether Mr. Reineke was discharged from the employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Steven Reineke was employed by L Country Trucking, Inc. as a full-time commercial truck driver. Mr. Reineke began the employment in April 2018 and last performed work for the employer on December 13, 2018. Mr. Reineke operated a tractor-trailer rig. The availability of work was dependent on the weather. During the first month of the employment, the employer paid Mr. Reineke 20 percent of the gross weekly revenue generated through operation of the tractor-trailer rig. The employer then increased the pay to 22 percent of the gross weekly revenue generated by the tractor-trailer. The employer hired Mr. Reineke primarily to haul asphalt during the road construction season. However, the employer also assigned Mr. Reineke to haul dirt, gravel, lime and chicken manure. At the start of the employment, the employer had Mr. Reineke haul with a belly-dump trailer. This was the type of trailer that Mr. Reineke preferred to operate. During the employment, the employer had Mr. Reineke transition to hauling with a side-dump trailer. Mr. Reineke viewed the side-dump trailer as less safe to unload.

Once the asphalt season was over, the employer had additional work available to Mr. Reineke hauling lime and chicken manure. Mr. Reineke was hesitant to haul chicken manure due to his concern about potential exposure to salmonella. Mr. Reineke initially agreed to do the work, with the hope that the employer would increase his pay by two percent of what the truck grossed for the week. When Mr. Reineke realized that his pay was not going to be increased, he refused to continue hauling the lime or manure. The employer took Mr. Reineke's refusal to mean that Mr. Reineke was resigning from the employment. The employer directed Mr. Reineke to return the employer's truck.

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

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(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).

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(26) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(26) The claimant left to go to school.

Iowa Admin. Code r. 871-24.25(13) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer

has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

The weight of the evidence in the record establishes that Mr. Reineke initiated the separation by refusing to perform the assigned work. Mr. Reineke's decision to separate from the employment was based primarily on two factors. One factor was Mr. Reineke's desire for an increase in his percentage-of-gross-revenue pay. However, the 22% of gross pay arrangement was the established arrangement. Mr. Reineke's dissatisfaction with the established pay arrangement would not cause the separation to be for good cause attributable to the employer. A second primary factor in the separation was Mr. Reineke's decision not to haul chicken manure. Mr. Reineke presented insufficient evidence to establish a causal connection between his health issues and hauling chicken manure. Mr. Reineke presented no medical evidence to show a causal connection or to prove that his decision not to haul chicken manure was based on advice from a physician. Mr. Reineke's decision not to make himself available for the ongoing commercial truck driving work the employer had available for him would not cause the separation to be for good cause attributable to the employer. Mr. Reineke references his preference for use of belly-dump trailer as a factor in his decision to leave the employment. However, Mr. Reineke used the side-dump trailer for a significant portion of the employment without incident. Mr. Reineke presented insufficient evidence to establish that the side-dump trailer was inherently less safe. For these reasons, the administrative law judge concludes that Mr. Reineke voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Reineke is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Reineke must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The March 1, 2019, reference 02, decision is affirmed. The claimant voluntarily quit the employment on December 13, 2018 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs