

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**GARRETT REED**

Claimant

**A PLUS TRANSPORTATION**

Employer

**APPEAL 21A-UI-20678-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/16/21**

**Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit

Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

**STATEMENT OF THE CASE:**

On September 13, 2021, Garrett Reed, the claimant, filed an appeal from the September 8, 2021, reference 01, unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on November 8, 2021. The claimant participated and testified. The employer did not participate.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as a delivery from May 2021, until he was separated from employment on July 15, 2021, when he quit. The claimant reported directly to Manager Dave (last name unknown) and Darrin (last name unknown).

At the time of his hire, the claimant agreed to be paid \$160.00 per day. The claimant was tasked with driving about 160 miles per day delivering items to their final destination. The employer is a subcontractor for FedEx.

The first vehicle the claimant was assigned had poor brakes. In fact, the anti-lock brake system indicator light was on the entire time the claimant drove this first vehicle. A dinging noise would sound the entire time he was driving it as well. With this vehicle, it did not appear to stop when he applied pressure with any consistency. Sometimes it would seem like it was not going to slow down at all and at other times it came to stop right away. Eventually, the claimant complained about this vehicle.

The claimant received his second work vehicle on the following day. This vehicle's indicator lights on its dashboard were active the entire time he drove it. When the claimant complained about the lack of reliability in this vehicle, Dave (last name unknown) sent him to pick another vehicle from Graham Tire.

The vehicle he picked up from Graham Tire had problems with its engine. In particular, it would take approximately 45 minutes for it to accelerate up to 60 miles per hour.

After driving it for about two weeks, the claimant complained about this vehicle. He was given a replacement vehicle that had terrible traction control. The traction control kicked on randomly, even if the weather was clear.

On July 12, 2021, the claimant told Dave that he was having trouble stopping with his current vehicle. Dave promised that he would get the issue fixed.

On July 15, 2021, the claimant told Dave (last name unknown) and Darrin (last name unknown) that he was quitting that same day. Specifically, the claimant said that he had narrowly avoided driving into a ditch because the brakes were still bad on his current vehicle. The claimant stressed that he believed all of the vehicles had issues with their performance. He also maintained that a big part of what led him to quit was the fact Dave assured him that the brake issue would be fixed and it was never corrected. He had also come to the conclusion that the employer's entire fleet of vehicles was defective, so it made little sense attempting to get a functional vehicle.

Over the course of the claimant's employment, the employer paid him less than what was agreed to for his daily pay three times, by paying him only \$150.00 per day.

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

For the reasons that follow, the administrative law judge concludes the claimant quit with good cause attributable to the employer.

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.

Claimant had an intention to quit and carried out that intention by tendering a written resignation. As such, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa

1956)(“The good cause attributable to the employer need not be based upon a fault or wrong of such employer.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956).

The claimant contends that he voluntarily quit due to intolerable working conditions, or unsafe working conditions, because he was provided a series of defective delivery vehicles with the last one being one without operable breaks. As such, if claimant establishes that he left due to intolerable or detrimental or unsafe working conditions, benefits would be allowed.

Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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 concluded that, because the intent-to-quit requirement was added to 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. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Iowa Admin. Code r. 871-24.26(4) provides:

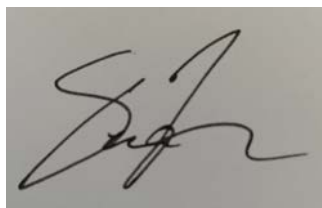
Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

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

The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). In this case, a reasonable person would have believed that claimant's working conditions were unsafe, intolerable and detrimental. The claimant was offered a series of defective vehicles over his term of employment. After being assigned several defective vehicles with notable safety issues, the claimant's quitting was reasonable because he had no expectation this defect would be corrected any time soon. Benefits are granted, provided he is otherwise eligible.

**DECISION:**

The September 8, 2021, reference 01, unemployment insurance decision is reversed. The claimant left with good cause attributable to the employer. Benefits are granted, provided he is otherwise eligible.

A handwritten signature in black ink, appearing to read 'S. Nelson', is shown on a light gray background.

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Sean M. Nelson  
Administrative Law Judge  
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Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

December 8, 2021  
Decision Dated and Mailed

smn/scn