

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HUBERT E ANDERSON

Claimant

APPEAL NO. 07A-UI-10925-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

**OC: 10/21/07 R: 12
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Hubert Anderson filed a timely appeal from the November 20, 2007, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on December 12, 2007. Mr. Anderson participated and presented additional testimony through his wife, Candace Anderson. Lea Peters, Human Resources, represented the employer. Exhibits One and Two were received into evidence.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Hubert Anderson was employed by Heartland Express as a full-time over-the-road regional truck driver from June 5, 2005 until June 22, 2007, when he voluntarily quit. Throughout the employment, Mr. Anderson resided in Bushnell, Florida. When Mr. Anderson commenced the employment, he had an understanding with his supervisor that he would be home three out of four weekends. The employer recruits drivers, in part, by suggesting in ads placed in trade publications that the employer's drivers are able to be home three out of four weekends. Mr. Anderson had several different supervisors throughout the employment. Eight to 12 months prior to his quit, Mr. Anderson concluded that the employer was not honoring the agreement regarding time-off on three out of four weekends. Mr. Anderson believed that weekends off meant he would be home on Friday or in the early morning hours on Saturday. Mr. Anderson would frequently not get home until Saturday afternoon, but would then generally also have a corresponding delayed start to the next work week. Mr. Anderson complained to the employer about not being able to plan his weekend and not being home at the start of the weekend.

The final incident that prompted the quit occurred immediately prior to the quit. The employer assigned Mr. Anderson to pick up a load and assured Mr. Anderson that he would be home for the weekend. When Mr. Anderson went to pick up the load, he learned that the load had already been collected by another driver. Mr. Anderson had to wait for another load to be arranged. Mr. Anderson then learned that he was not going to be able to go home for the

weekend, but was going to have to spend the weekend at the employer's terminal in Atlanta, Georgia. Because Mr. Anderson was paid by the mile, Mr. Anderson would not be earning any pay while he sat at the employer's terminal.

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.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The evidence in the record stops short of establishing intolerable and/or detrimental working conditions. The evidence indicates that Mr. Anderson worked in an industry and in a position where variable hours are the rule rather than the exception. The evidence establishes that Mr. Anderson was generally able to have most of the weekend off and that he was generally compensated for the missed portion of the weekend through a delayed start to his next work week. The weight of the evidence fails to establish that the employer intentionally misled Mr. Anderson with regard to the final load that prompted the quit.

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).

The evidence does not establish a significant change in the conditions of the employment. Even if the evidence had established that the changed work hours amounted to a significant change in the conditions of employment, the evidence indicates that Mr. Anderson acquiesced in the change by continuing in the employment several months, or a year, after the change went into effective.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Anderson voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Anderson is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Anderson.

DECISION:

The Agency representatives November 20, 2007, reference 02, decision is affirmed. The claimant voluntarily quit the employment 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 ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw