

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT E HUNTER**  
Claimant

**APPEAL NO. 08A-UI-02370-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLARK BRINK GRAIN COMPANY**  
Employer

**OC: 02/03/08 R: 02**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 7, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on March 25, 2008. Claimant participated with Paula Hunter. Witness Mike Probin was not available. Employer participated through Jerry Baltisberger and Lyle Brownlee.

**ISSUE:**

The issue is whether claimant quit the employment without good cause attributable to the employer.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time truck driver until January 31, 2008, when he quit. Claimant was involved in an accident on January 28 after a car pulled in front of him and spun out on the ice. The right front headlight was broken and the right steering tire was slashed. Employer sent claimant out in that truck with three loads on January 29 and told him to drive on roads without scales so the DOT would not shut the truck down. Claimant said the truck was not safe to drive and employer mentioned renting another truck but did not follow through or offer claimant another company truck. Claimant's cell phone broke and the company said the employer would have to turn it in, so claimant left the phone with employer and told him when he had another truck for him to use or at such time as the damaged truck was repaired, he would come back to work.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment 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.

871 IAC 24.26(2), (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.

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 Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 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 recently 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).

The damage to the truck created a safety risk to claimant and the general public. Employer's failure to repair it or provide (not just talk about it) another truck, and sending claimant out on three loads with that damage created an unsafe and intolerable work environment for claimant, which gave rise to a good cause reason for leaving the employment. Benefits are allowed.

#### **DECISION:**

The March 7, 2008, reference 01, decision is affirmed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw