

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIM A NESS

Claimant

APPEAL NO. 09A-UI-18511-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CORTEZ TRUCK SALES & EQUIPMENT INC

Employer

OC: 11/01/09

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 4, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 21, 2010. Claimant participated. Employer participated by Richard Cortez, owner and president; Connie Keatoning, secretary; Mary Hansen, sales representative; and Cliff Poole, general manager. The record consists of the testimony of Tim Ness; the testimony of Richard Cortez; the testimony of Connie Keatoning; the testimony of Mary Hansen; and the testimony of Cliff Poole.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer sells, services and installs truck equipment. The claimant worked as a salesperson for the employer. He started sometime in 2004. He was paid a salary and did not receive commissions.

On September 11, 2009, the claimant informed the employer that he was leaving to move to Minneapolis. He gave the employer two weeks' notice. The employer accepted the claimant's resignation and honored the claimant's two-week notice.

The claimant changed his mind about resigning and informed the employer on September 28, 2009, that he had "decided to stay on." The employer had hired a replacement for the claimant. Mr. Cortez, the company president, told the claimant that he would consider rehiring him. However, Mr. Cortez and Mr. Poole, the general manager, were going to change the salary structure for sales people. If the claimant decided to stay, he would be paid a base salary and commissions. The new sales person had agreed to the type of compensation structure. They were in the process of finalizing the terms of the sales compensation package.

The claimant was given a copy of the new package on October 30, 2009. Among the terms was a \$20,000.00 base salary plus expenses and a sales commission. On November 2, 2009, the claimant came in and said he did not want to stay on those terms. The new sales person, who actually started on November 9, 2009, was paid a salary plus commission. In her opinion, the sales commission formula was "very good".

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.

A quit is a separation initiated by the employee. 871 IAC 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). 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.

The evidence in this case established that it was the claimant who initiated the separation of employment. It is uncontroverted that on September 11, 2009, the claimant gave a two-week notice that he was going to quit. He was moving to Minneapolis to take another job. The employer accepted the claimant's resignation and the claimant was allowed to work for the entire two weeks of the notice period. The employer hired a replacement for the claimant.

The claimant apparently changed his mind and asked to stay. He was told that he was eligible for rehire, but the structure of the compensation package was going to change from salary only to base salary plus commissions. The final details had not yet been worked out. The new sales person was going to work under these terms. When the new package was presented to the claimant, he rejected it, considering it to be a slap in the face. He, in effect, rejected an offer of re-employment.

The claimant voluntarily left his job on September 11, 2009, without good cause attributable to the employer. Accordingly, benefits are denied.

DECISION:

The decision of the representative dated December 4, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid

wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs