

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

BRIAN E WRIGHT
Claimant

APPEAL NO. 18A-UI-04974-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CORE-MARK INTERNATIONAL INC
Employer

OC: 04/01/18
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Brian Wright filed a timely appeal from the April 25, 2018, reference 02, decision that disqualified him for unemployment insurance benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Wright voluntarily quit on January 19, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 16, 2018. Mr. Wright participated and presented additional testimony through Jim Wright. Amy Ross represented the employer and presented additional testimony through Dave Holdsworth. Exhibits 1, A and B were received into evidence.

ISSUE:

Whether Mr. Wright separated from the employment for a reason that disqualifies him for benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Brian Wright was employed by Farner-Bocken Company, a division of Core-Mark International, Inc., as a full-time "lumper" or delivery driver assistant. Mr. Wright began the employment in June 2017 and last performed work for the employer on January 18, 2018. Mr. Wright's immediate supervisor was Ben Johnson, Crossback Supervisor. Mr. Johnson reports to Dave Holdsworth, Director of Transportation. Mr. Wright would accompany the delivery driver and assist with delivering freight to various retail establishments in the Des Moines metropolitan area. The employer had two two-men crews assigned to the Des Moines metropolitan area. Mr. Wright's shift would start at 11:30 a.m. and would end when all assigned deliveries had been made, sometime between midnight and 2:00 a.m. Mr. Wright's work days were Monday through Thursday.

On November 29, 2017, Mr. Wright was involved in a physical altercation with the delivery driver he was assigned to work with that day, James Darnell. Mr. Darnell had ongoing anger management issues and regularly displayed aggression by throwing his two-wheel cart, by getting into arguments with staff at delivery sites, and by other similar behavior. Toward the end

of the shift on November 29, Mr. Wright and Mr. Darnell got into a verbal dispute about Mr. Wright's desire to get food from Burger King restaurant before returning to the employer's dock in Winterset at the end of the shift. When Mr. Darnell and Mr. Wright were getting out of the delivery truck, Mr. Wright renewed his complaint. Mr. Wright slipped as he was descending the stairs of the truck and fell to the ground. Mr. Darnell pounced on top of Mr. Wright and began to grapple with Mr. Wright. Mr. Wright did not physically respond to the physical aggression, but uttered comments that did nothing to de-escalate the situation. Mr. Wright asked Mr. Darnell, "Is that all you want to do is wrestle?" Mr. Darnell then aggressively pushed Mr. Wright, sending Mr. Wright's lunch box flying. Mr. Wright told Mr. Darnell, "You're done." Mr. Wright's father, James Wright, transports Brian Wright to and from work and was waiting to transport Brian Wright home on November 29 when he heard the commotion as Mr. Darnell assaulted Mr. Wright. James Wright walked to dock area in time to see Brian Wright on the ground with Mr. Darnell on top of him. James Wright then observed as Mr. Darnell pushed Mr. Wright as Mr. Darnell challenged Mr. Wright to fight back by saying "Come on! Come on!" Delivery driver Dale Meggison and driver assistant Chris Spatgen were also present. When the assault was over, Mr. Wright got into his father's vehicle and went home. Mr. Wright considered reporting the assault to the police, but decided against that.

Mr. Wright reported the assault to his supervisor, Mr. Johnson, the next morning. Mr. Wright told Mr. Johnson that he suffered a twisted neck and a black eye, and would be contacting a chiropractor. Mr. Johnson told Mr. Wright that the conduct was uncalled for, would not be tolerated, and that something would be done about it. Mr. Johnson reported the matter to Amy Ross, Human Resources Director, and Dave Holdsworth, Director of Transportation.

Mr. Wright is a military veteran, has been diagnosed with Post Traumatic Stress Disorder (PTSD), takes medication for PTSD, and receives psychological counseling services through the Veterans Administration. On November 30, 2017, Mr. Wright notified his psychologist about being assaulted the night before. Mr. Wright told the psychologist that while he might in the past have become violent in response to such conduct, he was not going to do that.

In response to information from Mr. Johnson regarding Mr. Wright's complaint of assaultive behavior, Ms. Ross, the Human Resources Director, and Mr. Holdsworth, the Director of Transportation, conducted an investigation that including interviewing Brian Wright, Mr. Darnell, Mr. Meggison and Mr. Spatgen. The employer did not collect any written statements, but took notes concerning what was said during the interviews. The employer interviewed Mr. Meggison and Mr. Spatgen on November 30, 2017. Mr. Meggison stated that Mr. Wright "would not stop running his mouth" about getting something to eat from Burger King and that he observed Mr. Darnell and Mr. Wright on top of each other like they were wrestling and yelling at one another. Mr. Spatgen stated that Mr. Wright said something while on the passenger side of the truck and that he saw both men leap at each other and to the ground between the trucks. Mr. Spatgen added that he and Mr. Meggison told the two men to knock it off. The employer interviewed Mr. Darnell and Brian Wright on December 1, 2017. Mr. Darnell stated that there had been an argument, that there had been no punches, and that he and Mr. Wright had been on the ground together. Mr. Darnell was apologetic, said that both men had been at fault, and that the incident should not have happened. Brian Wright told the employer that Mr. Darnell was made at Mr. Wright because Mr. Wright ordered a meal at Burger King, that Mr. Darnell had assaulted him, that Mr. Darnell had been on top of him, and that he had suffered a black eye, cut leg, and bruised shoulder. The employer did not interview Jim Wright, though he had also been present for the incident.

Despite Mr. Wright's assertion that he had been the victim of an assault, the employer concluded that both men were equally at fault. Ms. Ross and Mr. Holdsworth prepared a written

reprimand to be issued to both men. Mr. Johnson presented the reprimand to Mr. Wright on December 5, 2017. Mr. Wright signed the reprimand, which stated as follows:

Brian was involved in a physical altercation with a co-worker, James Darnell on 11/29/17. Upon investigation, management determined that the physical altercation was caused by both Brian and James. Both individuals were at fault and neither employee threw a punch. It appears that the two have had issues in the past but they had never had a physical altercation, they both blew up on this occasion. Brian apologized for his role in the confrontation.

Due to the physical altercation, Brian will serve an unpaid suspension on December 1st and December 4th for his role in the incident.

This is Brian's final warning. If Brian has any reported situation violating the harassment policy in the future he will be terminated.

If Brian retaliates in any way to his co-workers involved, he will be terminated.

In addition, Brian was warned that his activities outside the workplace cannot interfere within the workplace, for example phone calls, texts, or conversations with co-workers, otherwise he will be terminated. Brian must act in a professional manner towards our customers and fellow employees at all times, otherwise he will be terminated.

Following the altercation, the employer took steps to separate Mr. Darnell and Mr. Wright to the extent possible. The employer assigned Mr. Wright to assist delivery driver Dale Meggison and assigned Mr. Spatgen to assist delivery driver James Darnell. In addition, Mr. Holdsworth directed that the two Des Moines delivery teams cease the practice of helping the other delivery team to complete its delivery route. In the past, the delivery team that completed its route first would join the other team and assist with completing the second route. Ms. Ross and Mr. Holdsworth did not hear anything further regarding issues between Mr. Wright and Mr. Darnell and therefore assumed there were no further issues.

In the days leading up to Thursday, January 18, 2018, Mr. Wright's last day in the employment, Mr. Wright became concerned about an increase in contact with Mr. Darnell and with shouldering some of Mr. Darnell's work. Mr. Wright had been functioning under the belief that the employer had barred Mr. Darnell from having contact with Mr. Wright. However, the steps the employer took following the November 29 altercation did not go as far as a complete ban on contact between Mr. Darnell and Mr. Wright. Mr. Darnell and Mr. Meggison were on friendly terms. Mr. Darnell started showing up toward the end of shifts at delivery sites where Mr. Wright and Mr. Meggison were working. This contact between Mr. Darnell and Mr. Wright did not involve aggression or threats of aggression. After Mr. Wright completed his shift on January 18, 2018, he was next scheduled to work on Monday, January 22, 2018.

On Friday, January 19, 2018, Mr. Wright telephoned Mr. Johnson. Mr. Wright told Mr. Johnson that he could no longer work around Mr. Darnell, that he felt unsafe, and that Mr. Darnell had been showing up at job sites. Mr. Johnson had been unaware that Mr. Darnell was appearing at Mr. Wright's job sites. Mr. Wright told Mr. Johnson that he could not take it anymore.

The employer alleges that Mr. Wright made additional telephone calls and left additional messages on January 19 for Mr. Johnson, Mr. Darnell, and Mr. Meggison.

Mr. Wright did not make further contact with the employer and did not report for any additional shifts. The employer's work rules deem three consecutive absences without notice to the employer to be job abandonment. The policy was contained in the employee handbooks the employer had provided to Mr. Wright. When Mr. Wright was absent for shifts on January 22, 23 and 24, 2018 without notice to the employer, the employer deemed the employment to be terminated via job abandonment. On January 24, Mr. Johnson called Mr. Wright's telephone number and left a message for Mr. Wright indicating that the employer deemed the employment terminated through job abandonment. Mr. Wright did not respond to Mr. Johnson's message.

Following Mr. Wright's separation from the employer, the Des Moines delivery teams underwent additional changes. Mr. Spatgen separated from the employment. Mr. Darnell separated from the employment on March 30, 2018. Effective April 1, 2018, Mr. Johnson was still with the employer, but no longer a supervisor. Mr. Meggison continues with the employer as a delivery driver.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) 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.

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 Admin. Code r. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Administrative Code rule 871-24.26(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 213 (Iowa 2005).

The evidence in the record establishes a voluntary quit that was without good cause attributable to the employer. The weight of the evidence establishes that Mr. Wright was indeed assaulted by Mr. Darnell on November 29, 2017, but that there were no further similar incidents and no other aggression directed by Mr. Darnell at Mr. Wright following the November 29 incident. Though the employer conducted a less than thorough investigation of the November 29 matter, the changes the employer implemented following the investigation and reprimands were reasonable and greatly diminished Mr. Wright's contact with Mr. Darnell. Mr. Darnell's mere presence at Mr. Wright's jobsite a month and a half after the assault incident was insufficient to establish intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment. The evidence does also establish a voluntary quit without good cause attributable to the employer based on the three days of no-call/no-show absences.

Because the evidence in the record establishes a voluntarily quit without good cause attributable to the employer, Mr. Wright is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Wright must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The April 25, 2018, reference 02, decision is affirmed. The claimant voluntarily quit the employment on January 19, 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 ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs