

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES W CAVE
Claimant

APPEAL NO: 12A-UI-13546-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DECKER TRUCK LINE INC
Employer

OC: 10/07/12
Claimant: Appellant (1)

Section 96.5-1-c – Voluntary Leaving/Care of Ill or Injured Family Member

STATEMENT OF THE CASE:

James W. Cave (claimant) appealed a representative's October 31, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Decker Truck Line, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 12, 2012. The claimant participated in the hearing and presented testimony from one other witness, Elisabeth Cave. Brenda McNealey appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on April 25, 2012. He worked full time as an over-the-road truck driver. His last day of work was August 19, 2012. He voluntarily quit effective August 27, 2012.

The claimant went on home time as of August 19 and was scheduled to return to work on August 27. The claimant's wife, who had been diagnosed with a bone cancer, had fallen and broken her jaw on August 17. The claimant needed to be home for her to provide assistance and transportation to treatments through the end of October. On August 23 the claimant inquired as to whether he was eligible for FMLA (Family Medical Leave); on August 24 the employer advised him that he was not eligible. The claimant indicated that he would need to be off work through at least the end of October, but the employer indicated that the claimant would need to be able to return to work on August 27. The claimant responded that he could not do that, so that the employer should come and get the truck.

The claimant has not sought to return to work with the employer.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Where the quit is for a family member's medical or health reasons, the quit is disqualifying at least until the family member has recovered and seeks to return to work but no work is available with the employer. Iowa Code § 96.5-1-c; 871 IAC 24.26(8).

871 IAC 24.25 provides that, 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 claimant did express his intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. A voluntary quit can be for good cause attributable to the employer even if the employer is free from any negligence or wrongdoing. *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787 (Iowa 1956); *Shontz v. IESC*, 248 N.W.2d 88 (Iowa 1976). The claimant's original voluntary quit was for good cause under these provisions. However, the claimant must also demonstrate that he has sought to return to work after his wife's condition had sufficiently improved, but no work was available. He has not satisfied this burden. Benefits are denied until or unless the claimant satisfies this requirement of the statute and rule.

DECISION:

The representative's October 31, 2012 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of August 27, 2012, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, or until he has offered to return to work after his wife's recovery and no work was available, provided he is then otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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