**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID A STOCKTON**
Claimant

**WENGER TRUCK LINES INC**
Employer

**APPEAL NO: 09A-UI-11688-DT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 03/01/09**
**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Leaving
Section 96.7-2-a(2) – Charges Against Employer's Account

**STATEMENT OF THE CASE:**

David A. Stockton (claimant) appealed a representative's August 13, 2009 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Wenger Truck Lines, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was convened on August 31, 2009 and reconvened and concluded on September 4, 2009. The claimant participated in the hearing. Ryle Roseke appeared on the employer's behalf and presented testimony from one other witness, Paul Temming. 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.

**ISSUES:**

Did the claimant voluntarily quit for a good cause attributable to the employer? Is the employer's account subject to charge?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 9, 2009. He worked full time as a driver in the employer's over-the-road transportation business. His last day of work was July 17, 2009. The claimant voluntarily quit as of that date.

When the claimant initially began working for the employer he was part of a team. When hired the claimant had been told that team drivers could get about 5,000 paid miles per week, and that solo drivers could get about 2,200 paid miles per week. The claimant lost his partner after about eight days and became a solo driver on or about June 22.

After June 22 the claimant was averaging less than 1,500 paid miles per week. In part this was due to some miscommunication between the claimant and the dispatch manager, Mr. Temming, on a load Mr. Temming wanted the claimant to pick up on the evening of July 8. Under the DOT regulations, the claimant could not drive after 8:00 p.m. The load pick up would have been completed virtually at 8:00 p.m. The claimant argued that he could not pick up the load because

it would make him illegal, as he was assuming he would need to drive from the shipper to an off-site rest area after 8:00 p.m. Mr. Temming wanted the claimant to take his rest right at the shipper's location, something the claimant had not historically done. It was unknown whether or not the shipper would have even permitted the claimant to stay on site during his rest time.

As the claimant did not take that load, there was some delay in getting additional loads for the claimant, and he sat idle for several days. He interpreted this as retaliation for his declining to take the load he felt would have placed him into an illegal driving situation. However, the employer may simply not have had enough business to provide the claimant with additional loads and miles. Regardless, due to the dispute about taking the July 8 load and the lack of paid miles to the claimant, when the claimant returned to the employer's terminal on July 17 he turned in his keys and fuel cards and quit.

The claimant established an unemployment insurance benefit year effective March 1, 2009. He filed an additional claim effective July 12, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit her employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Where a claimant gives a number of reasons for leaving employment, all stated reasons must be considered to determine whether alone or in combination those reasons gave the claimant good cause to quit. Taylor v. IDJS, 362 N.W.2d 534 (Iowa 1985). A substantial change in contract of hire is recognized as grounds that are good cause for quitting that is attributable to the employer. 871 IAC 24.26(1).

While the administrative law judge believes the issues related to the July 8 load and the lack of payable miles were primarily due to good faith miscommunications rather that malice, "good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). While the employer may have had a good business reason for not providing sufficient miles to the claimant, the lack of payable miles significantly below what he had been told to expect was a substantial change in the claimant's contract of hire. Dehmel, supra. Benefits are allowed.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began October 1, 2007 and ended September 30, 2008. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

**DECISION:**

The representative's August 13, 2009 decision (reference 03) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs