

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEROME E ATCHISON
Claimant

CRST VAN EXPEDITED INC
Employer

APPEAL 17A-UI-06724-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/04/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 26, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 20, 2017. Claimant participated. Employer did not participate.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a commercial truck driver (over-the-road truck driver) from April 24, 2014, and was separated from employment on January 23, 2017, when he quit.

When claimant was hired, the employer did not guarantee him a set number of miles per week. The employer told claimant he would get no less than 800 miles per week, but would not guarantee a set number of miles. Claimant was aware that his weekly mileage would fluctuate when he was hired. Claimant is paid per mile. When claimant started with the employer his mileage rate was \$.25 per mile. Every couple of months, claimant's mileage rate increased and when he quit his mileage rate was \$.41 per mile.

On January 23, 2017, claimant called the dispatcher and told the dispatcher that he was quitting because he was not happy with the number of miles he was getting or the dispatchers for the employer. Claimant felt the dispatchers were very rude. The dispatchers assign the drivers their miles. Claimant quit effective immediately.

Claimant testified that prior to February 2016, he was averaging 3000 miles per week. Claimant testified that around February 2016 his average miles per week decreased to 1000 miles per week. From February 2016 until claimant quit on January 23, 2017, his average miles per week ranged from 1000 to 1500. When claimant's mileage decreased, he complained to the dispatchers. Claimant did not complain every time his mileage decreased. When claimant did complain, his mileage would increase to approximately 1500 miles per week. Claimant testified that the dispatchers were giving drivers that had a lower mileage rate more miles per week than

they were giving him. In June or July 2016, claimant complained to his supervisor's supervisor about his decreased miles. The supervisor's supervisor told claimant that he would check into it. Claimant did not contact the employer's human resources department about the decrease in his miles. Claimant testified his reduction in mileage caused his pay to be reduced in half. Claimant testified that he waited to quit because he liked the job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. Benefits are denied.

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.

Iowa Admin. Code r. 871-24.25(22) 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:

(22) The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). A notice of an intent to quit had been required by

Cobb v. Emp't Appeal Bd., 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added 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 Iowa Admin. Code r. 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. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Although claimant was not required by law to give the employer notice of his intent to quit, the change to the terms of hire must be substantial in order to allow benefits. At the hearing, claimant testified he quit because of the change in the number of miles he was receiving; however, claimant's mileage was reduced in February 2016. Claimant testified that this reduction in miles per week resulted in his income being reduced by half, which normally would be a good cause reason to quit; however, in this case, claimant testified that he continued to work from February 2016 until January 23, 2017. Claimant continued to work for almost a year after the change in his mileage, thus acquiescing to the changes. Furthermore, claimant's argument that he quit because the dispatchers were rude to him by providing him with a reduction in miles and bad loads is not persuasive. The dispatchers' actions also started in February 2016 (reduction in miles), but claimant continued to work for almost a year. Claimant has not met the burden of proof to show he quit with good cause attributable to the employer. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The June 26, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs