IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

TRACY J PORTER Claimant **C 2 C EXPRESS INC** Employer	**APPEAL NO. 22A-UI-05463-JT-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/06/22** **Claimant: Respondent (2)**

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

On February 28, 2022, the employer filed a timely appeal from the February 24, 2022, (reference 01) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged, based on the deputy's conclusion that the claimant voluntarily quit on February 7, 2022, with good cause attributable to the employer. After due notice was issued, a hearing was held on April 22, 2022. Tracy Porter (claimant) participated. Layn Muller represented the employer. Exhibits 1 through 4 and A through M were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntary quit without good cause attributable to the employer.
Whether the claimant was overpaid benefits.
Whether the claimant must repay overpaid benefits.
Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:
C2C Express, Inc. hauls freight for Federal Express. The employer services the FedEx hub in Ottumwa and operates dedicated dispatches in different directions from that hub. One dedicated dispatch route goes to Princeton, Illinois. Another goes to Council Bluffs. Another goes to Kansas City. The employer does not guarantee a driver a particular route, but attempts to keep the same driver on the same route when possible. Drivers are paid a flat route-specific daily rate.

Tracy Porter (claimant) worked for C2T Express during multiple distinct periods between March 2021 and January 15, 2022 as a full-time line-haul commercial truck driver. The claimant voluntarily separated from the employment in October 2021 due to dissatisfaction with the employment. The claimant voluntarily separated from the employer in November 2021 to accept other employment. The claimant commenced his most recent period of employment in November 2021. The claimant last performed work for the employer on January 14, 2022. The work required a commercial driver's license and subjected the claimant to United States Department of Transportation regulations. Until January 15, 2022, the claimant was assigned to the Princeton, Illinois route. The claimant was paid $205.00 per trip and completed one round trip per shift. The claimant would make one round trip per shift. The claimant's shift on the Princeton route would start at 7:30 p.m. Barring any unforeseen delays, the shift would end at about 3:00 a.m., about eight hours after the start. The claimant started out doing the run five to six days per week but agreed to run the route seven days a week, with 21 days on and then five of six days off.

On January 15, 2022, the claimant told the employer he would run his route, but then did not to report for work. On January 15, 2022, the claimant's mother was hospitalized COVID-19 symptoms. The claimant was exposed to COVID-19 through contact with his mother.

On January 16, 2022, the claimant notified the employer he would not be running his route that night due to his mother being in the hospital.

On January 17, 2022, the cliamant notified Fleet Manager Carole Wielenga that he needed to quarantine for five days due to being exposed to COVID-19 through contact with his mother. The claimant told the employer he would be unable to run his route January 16 through January 21. The claimant remained voluntarily off work beyond January 21, 2022. This was in part due to the employer's decision not to return the claimant to the same Princeton route. The parties engaged in a several-day discourse regarding the claimant's return to work.

On January 29, 2022, the parties agreed the claimant would return to work on February 7, 2022. The employer notified the claimant that the employer had reassigned the Princeton route to another driver and no longer had that route available for the claimant. After initial discussion about assigning the claimant to a later Princeton route, the employer abandoned that idea. The claimant agreed to run a route to Kansas City. The route duties were comparable to the Princeton route duties, except that the claimant would have to collect an empty trailer at the large FedEx Kansas City hub yard and bring it back to Ottumwa. In light of this additional duty, the Kansas City route paid a modest amount more than the Princeton route, $215.00, which included $12.00 for the "drop and hook." The Kansas City route shift start and end times were one hour later than the Princeton start and end times. The Kansas City route started at 8:30 p.m. Barring unforeseen delays, the claimant would likely arrive back in Ottumwa at 4:00 a.m.

On February 4, 2022, the employer notified the claimant that he needed to submit to a "random" drug test prior to returning to work. The claimant had been selected for drug testing through a United States Department of Transportation randomized selection process. The claimant was aware the DOT regulations required that the random drug screen be performed immediately after the employer notified the claimant he had been selected for drug testing. On February 4, 2022, the claimant asked the employer whether he needed to complete the drug screen on February 4, 2022. The employer responded that the claimant could report for the drug screen any week day, but to get it done as soon as he could. Though there was nothing to prevent the claimant from immediately reporting for the random drug screen, the claimant was concerned that the employer's decision to provide a wider window for the drug screening deviated from DOT requirements and could implicate the claimant in the deviation.

On February 7, 2022, the claimant notified the employer that he would not be returning to the employment. The claimant sent the following message to the employer:

> Layn, Carol…After thinking of the whole situation at hand ! My being demoted, my route being taken away because of my moms [sic] illness and needing to take time off! Not being returned to my normal route, being told I'm unreliable and not consistent ,moved to a different longer route. Asked to operate a unclean tractor,directly asked to break/ manipulate per, FMCSA guidelines by C2C .I won't be returning!! Thanks Tracy.

The employer replied, "We happily accept your resignation."

The claimant established an original claim that was effective February 6, 2022. Iowa Workforce Development set the weekly benefit amount at $601.00. The claimant received benefits.

On February 23, 2022, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview. The claimant participated. There is no indication the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview. The employer did not participate in the fact-finding interview. At the time the employer submitted its protest, the employer had named Mr. Muller as the person who would represent the claimant at the fact-finding interview and had provided Mr. Muller's cell phone number as the number the IWD deputy should call to reach Mr. Muller for the fact-finding interview. At the time of the fact-finding interview, the deputy called a different number and did not reach the employer.

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). 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.

Iowa Admin. Code r. 871-24.22(2)(j) provides:

> Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.
>
> j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

> (1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.
>
> (2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.
>
> (3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The evidence in the record establishes the claimant voluntarily quit effective February 7, 2022 by failing to return to work at the end of a leave of absence. The remaining question is whether the quit was for good cause attributable to the employer.

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.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 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 (Iowa 2005).

The weight of the evidence in the record establishes a voluntary quit that was without good cause attributable to the employer. The change route direction, from Princeton to Kansas City, involved changes to the employment that did not rise to the level of substantial changes within the meaning of the law. The work hours were comparable. The work duties were comparable. The only additional duty was the drop and hook, a minor addition that came with additional compensation. Though the employer erred in providing a wider window for drug screening than

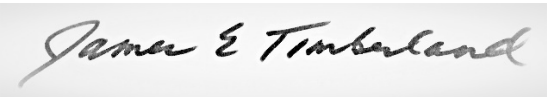
authorized by the USDOT, there was nothing to prevent the claimant from immediately reporting for the screen and, therefore, no negative impact on the claimant. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account will not be charged.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits. Because the employer did not participate in the fact-finding interview, and because the claimant did not receive benefits due to fraud or willful misrepresentation, the claimant is not required to repay the overpaid benefits. Because the employer was denied a reasonable opportunity to participate in the fact-finding interview, the employer's account will not be charged for the overpaid benefits.

DECISION:

The February 24, 2022, (reference 01) decision is reversed. The claimant voluntarily quit the employment on February 7, 2022, without good cause attributable to the employer. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged. The benefits the claimant received are an overpayment of benefits. The claimant is not required to repay the overpaid benefits. The employer's account will not be charged for the overpaid benefits.



James E. Timberland
Administrative Law Judge

May 26, 2022

Decision Dated and Mailed

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