

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DELMAR SCHEBAUM
Claimant

APPEAL NO: 09A-UI-17597-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BCH TRANSPORT LLC
Employer

OC: 10/25/09
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Delmar Schebaum (claimant) appealed an unemployment insurance decision dated November 13, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from BCH Transport, LLC (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 4, 2010. The claimant participated in the hearing. The employer participated through owner Bill Harvey. 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:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time driver from October 13, 2008 through October 17, 2009. He did not want to work weekends because he has custody of his disabled child. The employer hauls grain and tells all of his drivers that he knows they do not want to work weekends and he will do his best to prevent that, but sometimes during the harvest months, the employees have to work weekends. The claimant testified he only worked on two Saturdays but the employer's wage records confirm the claimant worked 11 weekends during his employment.

The claimant took off work on October 15 and 16, 2009 because his child did not have school those days. The employer always asks his employees to remind him when the employee was going to take time off work. The claimant reminded the employer he was taking off these two days on October 13, 2009 and the employer told the claimant he remembered. This was during harvest season and the employer told the claimant at that time, "weather permitting, we will be working this weekend." The claimant made no response although he testified at the hearing that he told the employer at that time that he could not work.

The claimant called the employer on the afternoon of October 14, 2009 to ask whether the truck was needed and the employer was unable to get back with him so the claimant took the truck home to Tarkio, Missouri where the employer rents a space for it. The employer called the claimant several times on Thursday and Friday but did not leave a message since the claimant had always been good about returning missed calls. The claimant never returned the calls to the employer. The employer called the claimant again on Friday afternoon and left a message advising him that he was scheduled out on Saturday morning and needed to call the employer. The claimant never called on Friday and failed to call or show up for work on Saturday morning. The employer called the claimant later Saturday morning and left a message advising him that since he knew he was scheduled to work, the employer could only assume the claimant was quitting his employment. The employer told the claimant to remove his property from the truck so he could get someone else to drive it. The claimant never returned the call and the employer went to Tarkio on Saturday evening to retrieve the truck. The employer worked on Sunday driving the claimant's truck.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit by failing to return the employer's calls on October 16, 2009. He carried out that intent to quit by failing to call or report to work on Saturday, October 17, 2009 when he knew he was scheduled to work. The claimant did not work due to lack of childcare. The law presumes it is a quit without good cause attributable to the employer when an employee leaves because of lack of childcare. 871 IAC 24.25(17). The claimant was advised at the time of hire he would have to work some weekends during the harvest months and he did work several weekends during his employment.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

DECISION:

The unemployment insurance decision dated November 13, 2009, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs