

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE L JELLISON
Claimant

APPEAL NO. 10A-UI-10795-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAY TRANSPORTATION INC
Employer

OC: 06/06/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 23, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 14, 2010. Claimant participated. Employer participated by Darrin Gray, owner. The record consists of the testimony of Kyle Jellison and the testimony of Darrin Gray.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired on March 3, 2010, as an over-the-road driver. The employer did not recruit the claimant. Rather the claimant approached the employer about work. The claimant and his father own a truck and wanted to haul freight to the west coast and east coast. The employer did not have that kind of freight available for hauling. The claimant then decided to work for the employer and was given a truck to drive by the employer.

The claimant was dissatisfied with his hours and pay. He did not want to work the weekends. He also did not make enough money to pay his expenses. The claimant had two mortgages as he had one house and was buying another. He had utilities and a cell phone and did not feel he was making enough money even though he was paid for all the work that he did. He wanted to have four days off for his son's birthday and the employer did agree to that.

His last day of actual work was April 8, 2010. The claimant was then involved in a non-work-related motorcycle accident and broke his hand. The accident was on or about April 12, 2010. The claimant did not see a medical doctor but rather went to his chiropractor. The claimant returned the truck and his key pass to the employer on or about April 24, 2010. He had lined up another job that he was supposed to start on May 15, 2010. That job fell

through. Since the time the claimant went to work for the employer, he has been trying to find freight to haul with his own truck. He is presently driving his own truck as an owner operator.

Work was available for the claimant at the time he stopped working for the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The evidence in this case established that it was the claimant who initiated the separation of employment. The employer did not terminate the claimant. Rather, the claimant decided to "part ways" with the employer, as he put it, sometime in mid-April 2010. He appears to have had a number of reasons for doing so. The claimant testified that he and his father owned a truck and that he had approached the employer about freight to the east coast and west coast. He then decided to "get his foot in the door" with the employer as a means of getting freight for his father and him to haul. The claimant quickly became dissatisfied with his employment because he wanted to be home on weekends and because his expenses were greater than his income. The evidence showed that the claimant was never promised that he would be home every weekend and that he was paid for the work he did. The claimant simply had incurred too many personal expenses and his income was insufficient.

Particularly telling, however, was the claimant's testimony that he quit his job because he had lined up another job. The claimant said he would have never quit his job with the employer if he was not certain that he had another job lined up. That job, which was supposed to start on May 15, 2010, fell through. The administrative law judge concludes that the claimant voluntarily quit his job because he had another job. He was recovering from a motorcycle accident and decided to quit his job with the employer and then go to work at his new job, by which time he would have recovered fully from his motorcycle accident.

The greater weight of the evidence is that the claimant voluntarily quit without good cause attributable to the employer. Accordingly, benefits are denied.

DECISION:

The decision of the representative dated July 23, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

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