

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

TODD A DAVIS

Claimant

and

DECKER TRUCK LINE INC

Employer

HEARING NUMBER: 19BUI-08809

EMPLOYMENT APPEAL BOARD
DECISION

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A, 96.5-1

DECISION

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Todd Davis, worked for Decker Truck Line, Inc. from April 17, 2019 through September 5, 2019 as a full-time truck driver working approximately 40 hours weekly. On September 4, 2019, the Claimant contacted the Employer as he was driving the Employer's truck back to the yard. He initially spoke to Zac, the fleet manager, about quitting. His call was transferred to retention manager, Darin Ladlie. The Claimant sought the Employer's advice regarding his thoughts about taking another job that would allow him to be at home more often. He wanted to know how he should go about doing that in a way that would keep him in good standing with employer, should he decide to take the job. The Claimant had applied for a job; was offered to start orientation, but he declined since he was still employed at Decker. (15:05-15:00; 13:25-12:47)

The call between Davis and Ladlie was interrupted, and the Employer told him he would get back to him. When another company representative (the compliance and workman's compensation specialist) contacted him about his work-related doctor's appointments scheduled for the following day, the Claimant indicated he was quitting. He stated his roommate would drive up to retrieve his belongings from the truck that night; they would stay in the

08809

Decker Motel; and truck would be returned in the the truck back in the morning. He also indicated he intended to keep his appointments. (9:22-8:53) The following morning, the workman's compensation doctor informed the Employer the Claimant did not show for his appointment. The Employer tried to contact the Claimant several times, but he didn't answer. Claimant would have been assigned a load after attending the doctor's appointments. There was continued work for him to complete.

After not hearing from the Claimant for 24 hours, the Employer assumed he quit, and issued a resignation letter. (Exhibit 2) It wasn't until a week later, the Claimant contacted the Employer seeking his last paycheck.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits: *Voluntary Quitting*. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25 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...

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. Both parties agree the Claimant spoke of his intention to leave Decker to several individuals, i.e., Zac Bachtel, Darin Ladlie and the workman's compensation specialist for other employment that would allow him to be home more often. Although the Claimant did not specify a particular date he was quitting, the Employer reasonably believed his spoken intention, coupled with his subsequent behavior (failure to keep doctor's appointment; retrieval of his belongings, return of the truck, and failure to respond to the Employer's calls) were indicative that he quit his employment on September 5, 2019. The court in *FDL Foods, Inc. v. Employment Appeal Board*, 460 N.W.2d 885, 887 (Iowa App. 1990), *accord Peck v. Employment Appeal Board*, 492 N.W.2d 438 (Iowa App. 1992) held that "[Q]uitting requires an intention to terminate employment accompanied by an overt act carrying out the intent. The record here demonstrates that Davis not only stated his intention to quit, he carried out his intention to sever his employment relationship with Decker based on the aforementioned acts.

There is nothing in the record to show his decision was prompted by any bad act attributable to the Employer. Rather, his desire to obtain other employment was purely personal. We note that quitting for other or better employment, in and of itself, is not necessarily disqualifying. See, Iowa Code section 96.5(1) "a". However, in order for qualify under those circumstances, the Claimant had to

have accepted that other employment, and actually worked in that employment. There is nothing in the record to establish this is what happened. In fact, the

08809

Claimant testified when asked, "You didn't end up taking another job?" The Claimant responded, "No, not yet." (15:05-15:00) The Claimant also indicated he declined because he was still working for Decker. (13:25-12:47) Evidence shows the Employer was waiting for the Claimant's return, which didn't happen. Based on this record, we conclude the Claimant's separation was a voluntary quit for which he failed to establish it was with good cause attributable to the Employer.

DECISION:

The administrative law judge's decision dated December 6, 2019 is **REVERSED**. The Employment Appeal Board concludes that the Claimant voluntarily quit without good cause attributable to the Employer. Accordingly, he is denied benefits until such time he has worked in and was paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(1)"g".

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv